

United States
Circuit Court of Appeals

Vol 2037

For the Ninth Circuit.

MARGARET B. BARRINGER and PHOENIX
TITLE and TRUST COMPANY, as Trustee,
Appellant,

vs.

GEORGE E. LILLEY, as Trustee in Bankruptcy
of the Estate of Windsor Square Development,
Inc., a corporation, bankrupt, SALT RIVER
VALLEY WATER USERS' ASSOCIATION,
a corporation, CENTRAL ARIZONA LIGHT
and POWER COMPANY, a corporation,
COUNTY OF MARICOPA, a political subdivi-
sion of the State of Arizona, STATE OF ARI-
ZONA, JOHN D. CALHOUN, County Treas-
urer of the County of Maricopa, State of Ari-
zona, MITT SIMS, Treasurer of the State of
Arizona, W. R. WELLS, RAYMOND L. NIER,
J. ALLEN WELLS, E. L. GROSE and
MAUDE M. GROSE, his wife, GLEN E.
WEAVER, LUCILLE NICHOLS, NELLIE
B. WILKINSON, SUSIE M. WALLACE, E.
R. FOUTZ, THOMAS J. TUNNEY, and
WINDSOR SQUARE DEVELOPMENT,
INC., the bankrupt corporation,

Appellees.

Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 432

FILED

JAN 25 1937

PAUL P. O'BRIEN,

CLERK

Upon Appeal from the District Court of the United
States for the District of Arizona.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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FLANIGAN & FIELDS,

Phoenix National Bank Bldg.,

Phoenix, Arizona,

Attorneys for Bankrupt. [3*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

DEBTOR'S PETITION.

[Form No. 1]

B 570 Phx

N. B.—Any person except a municipal, railroad, insurance, or banking corporation, shall be entitled to the benefits of this Act as a voluntary bankrupt.
Sec. 4.

N. B.—All petitions and the schedules filed therewith shall be printed or written plainly, without abbreviation or interlineation, except where such abbreviation and interlineation may be for the purpose of reference. General Orders, Rule V.

N. B.—Bankrupts shall file with petition a schedule of his creditors and property all in triplicate.
Sec. 7 (8:) also see Rule 35.

N. B.—\$30.00 deposit required. Sections 40, 48 and 52.

To the Honorable

Judge of the District Court of the United States, for the.....District of Arizona.

The Petition of WINDSOR SQUARE DEVELOPMENT, INC., a corporation of Phoenix, in the County of Maricopa, in the District of Arizona,
(Name in Full)

Real estate corporation, respectfully represents:
(State occupation)

That it has resided and had its principal place of business for the greater portion of six months next immediately preceding the filing of this petition at

Phoenix within said Judicial District; that it owes debts which it is unable to pay in full; that it is willing to surrender all its property for the benefit of its creditors, except such as is exempt by law, and desires to obtain the benefit of the Acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all its debts, and (so far as it is possible to ascertain) the names and places of residence of its creditors, and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all its property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts.

Wherefore, your petitioner prays that it may be adjudged by the court to be a bankrupt within the purview of said acts.

(WINDSOR SQUARE
DEVELOPMENT, INC.

(Signed) (by LEN D. OWENS JR.

(Christian name in full)

Petitioner.

(Signed) FLANIGAN & FIELDS,

Attorney for Petitioner.

.....
(Address)

A. The petition for adjudication shall be signed in the full Christian and surname of the petitioner and the petition for discharge in the same manner; in other places the customary signature of the signer may be used. Rule 14.

All petitions, schedules and pleadings must be upon white paper, approximately 14 inches long by 8½ inches wide. All pleadings must be properly endorsed with the name of the court, the title of the cause, and, if the parties appear by attorney, his name and office address. If the attorney resides in the city, the street and number must be given. Rule 13.

United States of America
District of Arizona—ss.

I, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

.....

Petitioner.

Subscribed and sworn to before me, this 25th day of October 1930.

.....
.....
.....

(Official Character)

N. B.—Oaths required by the act, except upon hearings in court, may be administered by referees and by officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken. Bankruptcy Act of 1898, c. 4, 20. [4]

United States of America,
District of Arizona,
County of Maricopa.—ss:

L. D. Owens does hereby make the solemn oath that he is the Secretary and Treasurer of WINDSOR SQUARE DEVELOPMENT, INC., the corporation mentioned and described as petitioner in the foregoing petition; that the statements therein contained are true according to the best of his knowledge, information and belief; that the reason why this verification is made by deponent and not by the petitioner herein is that the petitioner is a corporation; and that the deponent was duly authorized by resolution of the Board of Directors of the said WINDSOR SQUARE DEVELOPMENT, INC., to execute the foregoing petition for and in behalf of the said corporation for the purpose therein set forth.

(Signed) L. D. OWENS.

Subscribed and sworn to before me this 25th day of October 1930, A. D.

[Seal]

(Signed) ETHOL FROST,

Notary Public.

My commission expires Feb. 28, 1932. [5]

N. B.—“Debts” shall include any debt, demand or claim provable in bankruptcy. Sec. 1 [11]

N. B.—“Creditor” shall include anyone who owns a demand or claim provable in bankruptcy and may include his duly authorized agent, attorney or proxy. Sec. 1 [9]

SCHEDULE A

STATEMENT OF ALL DEBTS OF BANKRUPT Schedule A. (1)

Statement of all creditors who are to be paid in full or to whom priority is secured by law.

Claims Which Have Priority

Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated). Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

[1] Taxes and debts due and owing to the United States.

None.

Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated). Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

[2] Taxes due and owing to the state ofor to any county, district or municipality thereof.

None.

Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated). Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

[3] Wages due workmen, clerks, traveling or city salesmen, or servants to an amount not exceeding \$600.00 each, earned within three months before date of commencement of the proceeding.

None.

Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated). Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

[4] Other debts having priority by law.

None.

Total.....

WINDSOR SQUARE DEVELOPMENT,

INC., a corporation

By (Signed) Len D. Owens, Jr.

Treas.

Petitioner

Attest:

.....
Secretary

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14. [6]

Schedule A. (2)

CREDITORS HOLDING SECURITIES

(N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Acts of Congress relating to Bankruptcy, and whether contracted as partner or joint contractor with any other person, and if so, with whom.)

Reference to Ledger or Voucher.—Names of creditors.—Residence (if unknown, that fact must be stated).—Description of securities.—When and where debts were contracted.—Value of securities.

Amount
of Debts

A promissory note executed by Thomas J. Tunny, Dec. 20, 1928, payable to Margaret Barringer in the principal sum of \$85,000.00, with 7% interest from date of note, on which note there is now due the principal sum of \$70,388.60 and interest in the amount of \$3782.00 to Sept. 20, 1930. This note is secured by mortgage on all of lots located in Windsor Square, according to the map thereof on file in the office of the county Recorder of Maricopa County, subject to the terms of a certain declaration of trust known as trust No. 418 in the office of the Phoenix Title and Trust Co. of Phoe-

nix, Arizona. The payment of this
note and mortgage has been assumed
by petitioner 74,170.60
Total..... 74,170.60

WINDSOR SQUARE DEVELOPMENT,
INC., a corporation

By (Signed) Len D. Owens, Jr.

Treas.

Petitioner

Attest:

.....
Secretary

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14. [7]

Suggestion

(In filing this blank, be careful to strictly follow form which requires a statement as to “nature and consideration of debt; and whether any judgment,” etc.)

Schedule A. (3)

CREDITORS WHOSE CLAIMS ARE UNSECURED

(N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt to each creditor must be stated in full, and any claim by

way of set-off stated in the schedule of property.)

Reference to Ledger or Voucher.—Names of creditors.—Residence (if unknown, that fact must be stated).—When and where contracted.—Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and if so, with whom.

	Amount
Pratt-Gilbert Co. of Phoenix, Ariz.	
Open account, for merchandise	2.30
Arizona Sand & Rock Co. of Phoenix, Ariz. For gravel hauled	10.00
Central Arizona Light & Power Co. of Phoenix, Arizona, for labor	18.65
B. J. Jarrett Hardware Co. of Phoenix, Ariz. for hardware	1.22
Arizona Republican Engraving Co., of Phoenix, Arizona, for advertising	34.79
Arizona Republican, of Phoenix, Arizona for advertising	900.57
Myers-Leiber Co. of Phoenix, Arizona, for signs	247.50
Gazette Job Printing Co. of Phoenix, Arizona for printing	213.15
Schmidt & Hitchcock Inc. of Phoenix, Arizona, for use of machinery and labor	125.00
Dorris-Heyman Furniture Co. of Phoenix, Arizona, for furniture	34.28

Warners Delivery Service, of Phoenix, Arizona, for delivery service	17.50
Norman Nursery, of Phoenix, Arizona, for trees	345.57
Hammond McFarland Lumber Co. of Phoenix, Arizona, for lumber	136.65
Joannes Corporation, of Phoenix, Ariz.	1.87
K. T. A. R. Radio Station, of Phoenix, Arizona for advertisement	30.00
Vinson-Carter Electric Co. of Phoenix, Arizona, for supplies	119.41
R. L. Lamfron of Phoenix, Arizona, for labor	48.00
Total————	2286.46

continued to next page

WINDSOR SQUARE DEVELOPMENT,
INC., a corporation

By (Signed) Len D. Owens, Jr.

Treas.

Petitioner

Attest:

.....
Secretary

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14. [8]

Schedule A (3) continued

	forward	2286.46
Gazette Publishing Company of Phoenix, Ariz. advertisements		\$491.60
Elliott & Snell, of Phoenix, Arizona for legal service		275.00
Kibbey, Bennett Gust & Smith of Phoe- nix, Arizona, for legal service		250.00
Dwight B. Heard Investment Co. of Phoenix, Arizona, management services		1000.00
All above claims listed in this schedule are for the consideration equal to the amounts listed and were contracted in Phoenix, Arizona and no note, judg- ment or bond has been given for the same.		
A promissory note in the sum of \$3,000.00 executed by L. D. Owens Jr. of Phoe- nix, Arizona, payable to George Ben- nett, of Los Angeles, Calif. about Octo- ber, 1929, with 7% interest from date, which was assumed by the corporation		3210.00
A promissory note dated about October, 1929, executed by L. D. Owens, Jr. payable to J. P. Atkin, Los Angeles, Calif. with 7% interest from date and assumed by the corporation		13500.00
Note executed by L. D. Owens Jr. about October, 1929 payable to F. M. Hill, of Los Angeles, Calif. with 7% interest from date, and assigned by the corpo- ration		19000.00
	Total	\$60,013.06

WINDSOR SQUARE DEVELOPMENT,
a corporation

By (Signed) Len D. Owens, Jr.

Treas.

Petitioner

Attest:

.....
Secretary [9]

Schedule A. (4)

LIABILITIES ON NOTES OR BILLS DIS-
COUNTED WHICH OUGHT TO BE PAID
BY THE DRAWERS, MAKERS, ACCEPT-
ORS OR INDORSERS.

(N. B.—The date of the notes or bills, and when due, with the names, residences and the business or occupation of the drawers, makers, acceptors or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.)

Reference to Ledger or Voucher.—Names of holders so far as known.—Residence (if unknown, that fact must be stated).—Place where contracted.—Nature of liability, and whether same was contracted as partner or joint contractor or with any

other person; and if so, with whom.

None.

WINDSOR SQUARE DEVELOPMENT,
INC., a corporation

By (Signed) Len D. Owens, Jr.

Treas.

Petitioner

Attest:

.....
Secretary

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14. [10]

Schedule A. (5)

ACCOMMODATION PAPER

(N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the bankrupt be liable as a drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.

Reference to Ledger or Voucher.—Names of holders.—Residence (if unknown, that fact must be stated).—Names and residences of persons accommodated.—Place where contracted.—Whether lia-

bility was contracted as partner or joint contractor, or with any other person; and if so, with whom.

None

WINDSOR SQUARE DEVELOPMENT,
INC., a corporation

By (Signed) Len D. Owens, Jr.

Treas.

Petitioner

Attest:

.....
Secretary

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14. [11]

OATH TO SCHEDULE A

United States of America,
District of Arizona.—ss.

On this 25th day of October A. D. 1930, before me personally came L. D. Owens, Jr., Secretary and Treasurer of WINDSOR SQUARE DEVELOPMENT, INC., a corporation organized under the laws of the State of Arizona, the bankrupt mentioned in and which subscribed to the foregoing schedule; that said L. D. Owens, Jr., Secretary and Treasurer of said bankrupt, being by me first duly sworn, did declare said schedule to be a statement of all the debts of said bankrupt, in accordance with the Acts of Congress relating to bankruptcy.

(Signed) L. D. OWENS, Jr.

Subscribed and sworn to before me this 25th day
of October 1930.

[Seal]

(Signed) ETHOL FROST

Notary Public

My Commission expires Feb. 28, 1932. [12]

SCHEDULE B.

STATEMENT OF ALL PROPERTY OF BANKRUPT

Schedule B. (1)

Real Estate.

Location and description of all real estate owned
by debtor, or held by him. Incumbrances thereon,
if any, and dates thereof. Statement of particulars
relating thereto.

All of Windsor Square, according to the map
or plat thereof on file and of record in the office
of the County Recorder of Maricopa County,
State of Arizona, except the following lots:

Lots 1, 2, 12, 13, 14, 15, 17, 20, and 21 in
Block 1 thereof, also,

Lots 1, 2, 7, 9, 14, 24, 25, 26, 28, 30, 35, 37,
39 and 40 in Block 2 thereof, and,

Lots 1, 5, 21, 24, 31, 37, and 38 in Block 3,
thereof, and

Lots 1, 4, 5, 6, 10, 18, 22, and 23 in Block 4,
thereof, and,

Lots 1, 2, 4, 7, 8, 10, 12, 14, 18, 20, 21, and
24 in Block 5 thereof and,

Lots 2, 4, 6, and 11 in Block 6 thereof and,
Lots 1, 8, 16, 18, 20, 22, 24, 28, 30, 32, 36,
and 39 thereof in Block 7, and

Lots 14, and 16, 19, 21, 24, 25, 26, 27, 28,
29, 31, and 45 in Block 8 thereof and,

Lots 2, 9, 22, 23, 24, 25, 26, and 27 in Block
9 thereof.

The above real estate is subject to the terms
of trust No. 418 in the office of the Phoenix
Title & Trust Co. and subject to the note and
mortgage set forth in A-2.

WINDSOR SQUARE DEVELOPMENT,
INC., a corporation

By (Signed) Len D. Owens, Jr.

Treas.

Petitioner

Attest:

.....
Secretary

(Full sets of schedule blanks must be filed. If
there are no items applicable to any particular
blanks, such fact should be stated in said blank.
Each schedule sheet must be signed.)—Rule 14. [13]

Schedule B. (2)

PERSONAL PROPERTY

A. Cash on hand.

None

B. Bills of exchange, promissory notes, or securities of any description (each to be set out separately).

None

C. Stock in trade in.....business of.....
at.....of the value of.....

None

D. Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz:

None

E. Books, prints and pictures, viz:

None

F. Horses, cows, sheep and other animals (with number of each), viz:

None

G. Carriages and other vehicles, viz:

None

H. Farming stock and implements of husbandry, viz:

None

I. Shipping and shares in vessels, viz:

None

K. Machinery, fixtures, apparatus and tools used in business, with the place where each is situated, viz:

None

L. Patent, copyrights and trade-marks, viz:

None

M. Goods or personal property of any other description, with the place where each is situated, viz:

None

WINDSOR SQUARE DEVELOPMENT,
INC., a corporation,

By (Signed) Len D. Owens, Jr.

Treas.,

Petitioner.

Attest:

.....
Secretary.

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14. [14]

Schedule B. (3)

CHOSSES IN ACTION.

A. Debts due petitioner on open account.

None

B. Stock in incorporated companies, interest in joint stock companies, and negotiable bonds.

None

C. Policies of Insurance.

None.

D. Unliquidated claims of every nature, with their estimated value.

None

E. Deposits of money in banking institutions and elsewhere.

None

WINDSOR SQUARE DEVELOPMENT,
INC., a corporation.

By (Signed) Len D. Owens, Jr.,

Petitioner.

Attest:

.....
Secretary

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14. [15]

Schedule B. (4)

PROPERTY IN REVERSION, REMAINDER
OR EXPECTANCY, INCLUDING PROP-
ERTY HELD IN TRUST FOR THE
DEBTOR, OR SUBJECT TO ANY POWER
OR RIGHT TO DISPOSE OF OR TO
CHARGE.

(N. B.—A particular description of each interest must be entered. If all, or any of the debtor's property has been conveyed by deed or assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and

the disposal of the same, as far as it is known to the debtor.)

Particular Description.

General Interest.

Interest in land.

See schedule B-1.

Personal Property.

None

Property in money, stock, shares, bonds, annuities, etc.

None

Rights and powers, legacies and bequests.

None

Property heretofore conveyed for the benefit of creditors.

What portion of debtor's property has been conveyed by deed or assignment, or otherwise, for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.

What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy?

WINDSOR SQUARE DEVELOPMENT,
INC., a corporation.

By (Signed) Len D. Owens, Jr.,

Treas.,
Petitioner.

Attest:

.....
Secretary.

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blank,

such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14. [16]

Schedule B. (5)

A particular statement of the property claimed as exempted from the operation of the Acts of Congress relating to Bankruptcy, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description and present use.

Military uniform, arms and equipments.

None

Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.

None

N. B.—This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months, or the greater portion thereof, immediately preceding the filing of the petition.

WINDSOR SQUARE DEVELOPMENT,
INC., a corporation.

By (Signed) Len D. Owens, Jr.,

Treas.,

Petitioner.

Attest:

.....
Secretary.

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14 [17]

Schedule B. (6)

BOOKS, PAPERS, DEEDS AND WRITINGS
RELATING TO BANKRUPT'S BUSINESS
AND ESTATE.

The following is a true list of all books, papers, deeds and writings relating to my trade, business, dealings, estate and effects, or any part thereof, which at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books.

All records of property owned by petitioner is in possession of Phoenix Title & Trust Co. of Phoenix, Arizona under its trust No. 418.

Deeds.

See above.

Papers.

See above.

WINDSOR SQUARE DEVELOPMENT,
INC., a corporation.

By (Signed) Len D. Owens, Jr.,

Treas.,

Petitioner.

Attest:

.....
Secretary.

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14. [18]

OATH TO SCHEDULE B.

United States of America,
District of Arizona—ss:

On this 25th day of October A. D. 1930, before me personally came L. D. Owens Jr., Secretary and Treasurer of WINDSOR SQUARE DEVELOPMENT, INC., a corporation organized under the laws of the State of Arizona, the bankrupt mentioned in and which subscribed to the foregoing schedule; that said L. D. Owens Jr., as Secretary and Treasurer of said bankrupt, being by me first duly sworn, did declare said schedule to be a statement of all the debts of said bankrupt, in accordance with the Acts of Congress relating to bankruptcy.

(Signed) L. D. OWENS, JR.

Sworn and subscribed to before me this 25th day of October 1930.

[Seal] (Signed) ETHOL FROST, Notary Public.

My commission expires Feb. 28, 1932. [19]

SUMMARY OF DEBTS AND ASSETS.

From the statements of the bankrupt in Schedules A and B.

	Dollars	Cents
Schedule A.		
1. (1) Taxes and debts due the United States		None
1. (2) Taxes due States, Counties, Districts and Municipalities.....		None known
1. (3) Wages		None
1. (4) Other debts preferred by law.....		None
Schedule A.		
2. Secured claims	74,170.60	
Schedule A.		
3. Unsecured claims	60,013.06	
Schedule A.		
4. Notes and bills which ought to be paid by other parties thereto.....		None
Schedule A.		
5. Accommodation paper		None
<hr/>		
Schedule A, Total	134,183.66	

Schedule B.

1. Real Estate288,000.00

Schedule B.

2. a Cash on hand.....None
 2. b Bills, promissory notes, and
 securitiesNone
 2. c Stock in trade.....None
 2. d Household goods, etc.....None
 2. e Books, prints and pictures.....None
 2. f Horses, cows and other
 animalsNone
 2. g Carriages and other vehicles.....None
 2. h Farming stock and
 implementsNone
 2. i Shipping and shares in
 vesselsNone
 2. k Machinery, tools, etc.....None
 2. l Patents, copyrights and trade-
 marksNone
 2. m Other personal property.....None

Schedule B.

3. a Debts due on open accounts.....None
 3. b Stocks, negotiable bonds, etc.....None
 3. c Policies of insurance.....None
 3. d Unliquidated claimsNone
 3. e Deposits of money in banks
 and elsewhereNone

Schedule B.

4. Property in reversion,
 remainder, trust, etc.....None

Schedule B.

5. Property claimed to be
exemptNone \$

Schedule B.

6. Books, deeds and
papersNone

Schedule B, Total.....288,000.00

WINDSOR SQUARE DEVELOPMENT,
INC.

By (Signed) Len D. Owens, Jr.,
Secretary-Treasurer,
Petitioner.

(N. B.—This summary Blank must be filled out
and properly footed.) [20]

[Endorsed]: Filed Oct 25 1930. C. R. McFall,
Clerk United States District Court for the District
of Arizona. By H. F. Schlittler, Deputy Clerk. [21]

In the United States District Court, for the District
of Arizona.

No. 570B-Phoenix.

In the Matter of WINDSOR SQUARE
DEVELOPMENT, INC., a corporation,
Bankrupt.

GEORGE E. LILLEY, as Trustee in Bankruptcy,
vs.

MARGARET B. BARRINGER, et al.
(Alleged Lien Holders).

PRAECIPE FOR SUPPLEMENTAL
TRANSCRIPT.

You are hereby requested to prepare and transmit to the United States Circuit Court of Appeals for the Ninth Circuit a supplemental transcript for the purpose of the appeals to said Circuit Court of Appeals from the above-entitled cause, including therein the following portions of the record:

(1) Debtor's petition filed by Windsor Square Development, Inc., together with original schedules filed therewith.

(2) This praecipe.

Dated this 18th day of December, 1936.

ELLINGWOOD & ROSS,
WM. H. MACKAY,

Attorneys for Margaret B. Barringer and Phoenix Title & Trust Company.

[Endorsed]: Service of a copy of the within praecipe acknowledged this 18th day of December, 1936.

ALICE M. BIRDSALL,

THOMAS W. NEALON,

Attorneys for George E. Lilley,
Trustee in Bankruptcy of Windsor Square Development, Inc.,
Appellee.

Filed Dec 18 1936. Edward W. Scruggs, Clerk
United States District Court for the District of Arizona. By Wm. H. Loveless, Chief Deputy Clerk.

[Endorsed]: No. 7765. Filed Dec. 21, 1936. [22]

MINUTE ENTRY

of Tuesday, October 28, 1930

May 1930 Term

At Tucson

Honorable William H. Sawtelle, United States District Judge, Presiding.

B-570

In the Matter of

WINDSOR SQUARE DEVELOPMENT, INC.,
a corporation,

Bankrupt.

ORDER OF ADJUDICATION AND
REFERENCE

The petition of Windsor Square Development, Inc., a corporation that it be adjudged a bankrupt,

within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said Windsor Square Development, Inc., a corporation is hereby declared and adjudged a bankrupt accordingly.

IT IS THEREFORE ORDERED, That upon the petition filed in this Court by or against said bankrupt on the 25th day of October, A. D. 1930, said matter be referred to Hon. R. W. Smith one of the Referees in Bankruptcy of this Court, to take such further proceedings therein as are required by said acts; and that the said bankrupt shall attend before said Referee on the 10th day of November, 1930, at Phoenix and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said bankruptcy. [5]

[Title of Court and Cause.]

TRUSTEE'S PETITION TO MARSHAL LIENS
AND SELL PROPERTY FREE AND
CLEAR OF ENCUMBRANCES. [6]

[Set out in full in the STATEMENT OF EVIDENCE at page 168 of this printed transcript.]

[Title of Court and Cause.]

NOTICE OF MEETING

To the Creditors of the Above Named Bankrupt:

Notice is hereby given that on the 18th day of June, 1931, at 2 o'clock in the afternoon, a meeting

of the creditors of the above named bankrupt will be held at my office, No. 315 Ellis Building, in the City of Phoenix, Arizona, at which time the creditors may attend, consider Trustee's petition to marshal liens and sell property free and clear of encumbrances, and transact such other business as may properly come before the meeting.

Phoenix, Arizona, June 8, 1931.

R. W. SMITH

Referee in Bankruptcy

[Endorsed]: Filed June 8, 1931. R. W. Smith,
Referee. [13]

[Title of Court and Cause.]

PETITION FOR SERVICE UPON NON-RESI-
DENT LIEN HOLDERS AND CLAIMANTS,
[14]

[Set out in full in the STATEMENT OF EVI-
DENCE at page 178 of this printed transcript.]

[Title of Court and Cause.]

ORDER FOR SERVICE ON NON-RESIDENTS
IN MARSHALING OF LIENS AND SALE
FREE AND CLEAR OF ENCUMBRANCES.
[19]

[Set out in full in the STATEMENT OF EVI-
DENCE at page 181 of this printed transcript.]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE ON TRUSTEE'S
PETITION TO MARSHAL LIENS AND
SELL FREE AND CLEAR OF ENCUM-
BRANCES. [22]

[Set out in full in the STATEMENT OF EVI-
DENCE at page 176 of this printed transcript.]

[Title of Court and Cause.]

PROOF OF PUBLICATION OF ORDER TO
SHOW CAUSE. [44]

[Set out in full in the STATEMENT OF EVI-
DENCE at page 183 of this printed transcript.]

[Title of Court and Cause.]

ORDER AUTHORIZING SALE OF REAL
ESTATE FREE AND CLEAR OF ENCUM-
BRANCES AND DIRECTING ALL LIENS
HELD BY ANY LIEN HOLDERS UPON
SAID PREMISES TO BE TRANSFERRED
TO THE PROCEEDS OF SAID SALE. [45]

[Set out in full in the STATEMENT OF EVI-
DENCE at page 184 of this printed transcript.]

[Title of Court and Cause.]

ANSWER TO COUNTY OF MARICOPA AND JOHN D. CALHOUN, AS TREASURER OF MARICOPA COUNTY, AND TO TRUSTEE'S PETITION TO MARSHAL LIENS AND SELL PROPERTY FREE AND CLEAR OR INCUMBRANCES.

COMES NOW the County of Maricopa and John D. Calhoun, the Treasurer of said County and by its counsel, answers the Trustee's Petition to marshal liens and sell property free and clear of incumbrances as follows, to-wit:

Referring to Paragraph III, page 6 of Trustee's petition to marshal liens and sell property free and clear of incumbrances in which the said trustee alleges the penalty upon the non-payment of back taxes, is in violation of the Constitution of the United States, the above named defendants specifically deny said allegation and put the trustee on strict proof of the same. The above named defendants admit each and every other allegation contained in said Trustee's petition to marshal liens, et cetera, which have any reference to the aforesaid defendants.

WHEREFORE these defendants pray that the claim or claims for taxes which have been heretofore filed, and a copy of which is hereto attached and made a part hereof, be allowed in the full

amount and that the same be paid [53] from the funds of the estate.

WALLACE W. CLARK,
Wallace W. Clark, Attorney,
for County of Maricopa,
and John D. Calhoun,
Treasurer. [54]

In the District Court of the United States for the
Federal District of Arizona Division.

In Bankruptcy No. 570-Phx.

In the Matter of

WINDSOR SQUARE DEVELOPMENT,
INC., a corporation

Bankrupt.

State of Arizona,

County of Maricopa—ss.

At Phoenix in the Federal District of Arizona on the day of August 1931 came John D. Calhoun of Phoenix in the county of Maricopa in the Federal district of Arizona and made oath

(1) That he is the Treasurer of Maricopa County of state of Arizona.

(2) That he is one of the partnership firm of consisting of himself and of

(3) That he is the treasurer of the corporation incorporated by and under the laws of

the state of and carrying on business at in the county of and state of and that he is duly authorized to make this proof, and to execute the power of attorney hereinafter contained.

(4) That the said Windsor Square Dev. Inc., the corporation for whom a petition for adjudication of bankruptcy has been filed, was, at or before the filing of said petition, and still is, justly and truly indebted to said County of Maricopa in the sum of Fourteen Hundred Sixty and 92/100 Dollars (\$1,460.92).

(5) That the consideration of said debt is as follows: For Taxes due for the fiscal years 1929 and 1930, on real property previously owned by the Windsor Square Development, Inc., said real property now being a part of the above entitled bankrupt estate. A copy of said tax statements are hereto attached and made a part hereof.

(5a) That the date of maturity of said debt is past due.

(5b) That no note has been received nor judgment recovered therefor, (except).

(6) That no part of said debt has been paid (except). [55]

(7) That there are no set-offs or counter claims to the same (except).

(8) That said creditor has not, nor has any person by order of said creditor, or to the knowledge

or belief of said deponent for the use of said creditor, received any manner of security for said debt whatever (except the following which are the only securities held by said creditor for said debt that the aforesaid taxes are by statute declared to be a first and prior lien on the real property for which they are assessed and levied.

(9) That this deposition is not made by the claimant (nor if it has been hereinbefore stated to be a corporation by its treasurer) in person because and that deponent is duly authorized by his principal to make this deposition and that it is within his knowledge that the debt hereinbefore mentioned was incurred as and for the consideration, and said creditor is constituted as herein above stated.

(10) Letter of Attorney to.....
 Attorney-at-Law. You or any one of you are hereby authorized by said creditor by the person making the foregoing deposition, who is duly authorized thereto, to appear for and represent said creditor and vote for said creditor in any proceedings, or meetings, which may be had or called in the above entitled proceeding, in court, before the referee in bankruptcy or elsewhere, and particularly to vote for said creditor in the choice of a trustee of said bankrupt whenever such selection is held, to accept or in your discretion oppose confirmation of, any composition offered by or in behalf of said bankrupt, and to receive and receipt for any and all

moneys which may be, or may become, payable to said creditor therein for or on account of said debt.

In witness whereof said creditor by its agent has hereunto signed its name and affixed its seal, when signing the deposition preceding, the 24th day of August 1931.

MARICOPA COUNTY (L. S.)

Individual executing ALWAYS sign here

By JOHN D. CALHOUN (L. S.)

Creditor.

JOHN D. CALHOUN,

Treasurer.

By

Individual executing ALWAYS sign here

Subscribed, sworn to and acknowledged before me this 24th day of August 1931 by the subscriber who (is personally known to me) or (has satisfactorily proved his identity).

[Seal] HENRY B. LEEZER

Notary Public. My commission expires May 1, 1934. [56]

INSTRUCTIONS.

ANNEX ITEMIZED STATEMENT OF ACCOUNTS AND NOTES IF ANY.

This form combines with some slight verbal changes the Official Forms Nos. 31, 32, 33, 34, 35, 36, besides a general letter of attorney abbreviated and modified from official form No. 20, and has been approved by prominent referees in bankruptcy as suitable for all ordinary proofs of debts under

the Bankruptcy Acts of 1898. Claims arising after the filing of the petition or unliquidated damages or for contingent liability only are not provable in Bankruptcy. The clauses are numbered for convenience of reference only. It will be noticed that the introductory clause and those numbered 4, 5, 6, 7, 8, must be used in every proof, while circumstances determine when to use the others. As to clauses 1, 2, 3, 9, see instructions B, C, D, E. (The Orders and Official Forms do not expressly authorize proof by agent in case of debt to partnership or corporation nor when required to be made by assignor but it is thought that the act itself does so by fair construction.) F, G, H refer to certain uses of clause 5, F to clauses 5a and 5b, I to clause 10, and A, J, K, L, to every proof. Extra space in any clause may be secured by attaching paper.

(A) In every proof, those who may make proofs are the owners of the debts respectively at the time of the proof (except in the case of claims assigned after the filing of the petition and then the owners at that time) and their agents or officers who can make the statements required according to the circumstances as pointed out in the instructions. The name of the court and bankrupt should be filled in at the top. The number may be supplied [57] later. Also fill in the blank spaces shown by the dotted lines according to the facts in the introductory clause, and in the clause marked 4. In proof made by the assignor, strike out clause 10

and "and still is" in clause 4, and the fact of the assignment and the name of the assignee may be given in any space not otherwise used. In filling in clause 5, observe F, G, or H if the claim be of the kind there italicized. In clauses 6, 7, 8, if the printed part be true without exception strike out the word "except" and what follows. Strike out all the clauses, parts and words inapplicable or not intended to be used, and observe instructions J, K, L, as to executions, etc. Immaterial errors will be disregarded or corrected.

(B) For proof of debt to individual by himself strike out clauses 1, 2, 3, 9.

(C) For proof of debt by agent all of clauses 1 and 9 are necessary. Fill them in and strike out clauses 2, 3. In clause 1 it is better to add a statement showing, if the creditor be a firm, that fact and the names of its members, and if a corporation that fact and the State in which incorporated.

(D) For proof of debt to partnership by member fill in clause 2 and strike out clauses, 1, 3, 9.

(E) For proof of debt to corporation by its treasurer fill in clause 3 and strike out clauses 1, 2, 9. No other officer is authorized to make proof of claim of a corporation, unless there be no treasurer. In that case it may be made by the officer whose duties most nearly correspond to those of a treasurer, and he should use clause 9, stating those facts there on the dotted lines, also properly change the word "Treasurer" in clause 9, and strike out

clauses 1, 2 and all of clause 9 below the dotted lines. [58]

(F) Clauses 5a and 5b are not required to be used except for debts founded on open account, when they are required, and the date required to be inserted in clause 5a in case of an account of several items is the "average due date". There is no general rule requiring a statement of account to be furnished, but it is generally advisable to attach an itemized statement to proof of debt if practicable, referring to it in clause 5 as, for instance "goods sold per statement attached."

(G) In proving on note or other instrument in writing, the original note or other instrument must be attached, or if lost or destroyed that fact and the circumstances must be stated in clause 5. Originals will be returned after allowance or disallowance of claim, if copies be supplied. Hence, attach copies also.

(H) In proving debt founded on judgment clause 5 should include a full description of the judgment, with the date and place of entry, or a transcript may be attached and there referred to, as for instance, "judgment of which transcript is attached." If the judgment was recovered after the filing of the petition in bankruptcy, the transcript of proof should show the damages and costs separately and the proof, the amount of costs "incurred in good faith" before such filing.

(I) To use clause 10, letter of attorney, insert name of attorney or firm of attorneys if not already done, also date, and strike out any provision not

desired, to suit circumstances. A letter of attorney is not essential to the proof of the debt. One is printed on this blank for use before those courts and referees which require attorneys to show written authority, but it would seem that an attorney of the U. S. District Courts under a general retainer [59] which may be unwritten, needs no letter of attorney to act for a creditor in a bankruptcy proceeding. See 1 Am. B. N. 205, and *Re Gasser*, 5 Am. B. Rep. 32.

(J) In signing, the person executing should sign his individual name on the first signature line in every case. If he be the individual creditor and clause 10 is used write "L. S." or attach seal after his name. In case of a firm or a corporation the firm or corporate name should be written on second signature line, and if clause 10 is used add "L. S." or attach a seal for the firm or imprint the corporate seal for the corporation and let the person signing again write his own name on the last line adding in case of a corporation "its treasurer" if he be such.

(K) After signing, the proof may be sworn to and letter of attorney acknowledged before a referee in bankruptcy, any officer authorized to administer oaths in the United States Courts, and United States diplomatic or consular officer in a foreign country, or any officer authorized to administer oaths under the law of the state where made, and the latter need not use seal except in the states whose laws require it on other affidavits generally

for use there. "County clerk's certificates" are not necessary. If clause 10 be omitted strike out "and acknowledged."

(L) On the outside make suitable changes when debt is secured, or general letter of attorney is not used. The address of the creditor should be given to insure the proper direction of notices of proceedings. [60]

In Case No. In Bankruptcy
 In the District Court of the United States
 District of

In the matter of

.....

Bankrupt.

Proof of Unsecured Debt With Letter of Attorney
 Memorandum of appearance in the above entitled
 matter before

.....

Referee.

.....

Creditor.

.....

Street and Number.

.....

City or Town and State.

Amount of Claim \$.....

Hereby appear by

Such appearance being authorized by general
 letter of attorney included within.

Received copy this 26th day of August, 1931.

THOMAS W. NEALON

Attorney for Trustee.

[Endorsed]: Filed Aug. 26, 1931. R. W. Smith
Referee. [61]

[Title of Court and Cause.]

ANSWER OF W. R. WELLS TO TRUSTEE'S
PETITION AND TO COURT'S ORDER TO
SHOW CAUSE.

Comes now, W. R. WELLS, by his attorneys, Messrs. Hayes, Standord, Walton, Allee and Williams, and for answer to the petition of the trustee herein of the estate of the Windsor Square Development Inc., a corporation, Bankrupt, and to the order to show cause issued by the court thereon, and admits, denies and alleges as follows, to wit:

—I—

Alleges that Lot 2 in Block 1 of Windsor Square, according to the map of same recorded in Book 20 of Maps, at page 27, in the office of the County Recorder of Maricopa County, Arizona, set up in the trustee's petition, was sold to this [62] answering defendant by the Windsor Square Development Inc., through its trustee, Phoenix Title and Trust Company; that thereafter a general warranty fee simple deed was executed and delivered by the said trustee to the said lot to this answering defendant and he is now the owner and in possession thereof.

—II—

Further answering said petition, and for the information of the trustee and the court, he further alleges that he also purchased Lot 21 in Block 1 in said Windsor Square, to which lot a general warranty fee simple deed was executed to him and he is now the owner and in possession thereof. That Lots 1 and 20 in Block 1 in said Windsor Square, were purchased by him and are now in his possession under a contract with the Phoenix Title and Trust Company, as trustee; that the sales price on Lot 1, is \$600.00, on which he owes a balance as of July 15th, of \$167.02; that the purchase price on Lot 20, in Block 1, was \$1,094.00, on which he owes a balance of \$460.36, as of July 15th, 1931.

WHEREFORE, having fully answered herein, he prays that such order and decree may be entered in the above styled matter as will fully protect his rights as herein alleged; that no interest in said lots by way of lien or otherwise be adjudicated prior to his interest thereon; and for his costs herein expended and all proper relief.

HAYES, STANFORD, WALTON,
ALLEE & WILLIAMS

Attorneys for W. R. WELLS.

Copy hereof mailed to Geo. E. Lilley, Trustee,
this Aug. 31, 1931.

MATT S. WALTON

Of Counsel.

[Endorsed]: Filed Aug. 31, 1931. R. W. Smith,
Referee. [63]

[Title of Court and Cause.]

ANSWER OF DEFENDANT
RAYMOND L. NIER.

RAYMOND L. NIER, one of the defendants herein, for his answer, hereby alleges:

That on or about the 25th day of February, 1930, he purchased by sales agreement, Lot No. 16, Block 1, Windsor Square, according to the map, or plat, of said Windsor Square on file and of record in the office of the County Recorder of Maricopa County, Arizona, in Book 20 of Maps, at page 37, for the sum of Thirteen Hundred Dollars (\$1300.00), payable One Hundred Ninety (\$190) Dollars in cash, and monthly installments of [64] Twenty-Six (26) Dollars; that he has paid the sum of Three Hundred Twenty-Eight Dollars and Twenty-Four Cents (\$328.24) on the said agreement since that time; that the said defendant claims a lien on said lot in the amount of Three Hundred Twenty-Eight Dollars and Twenty-Four Cents (\$28.24).

WHEREFORE, Defendant Raymond L. Nier prays to the Court for an order impressing the said lot with the lien in the sum of Three Hundred Twenty-Eight Dollars and Twenty-Four Cents (\$328.24).

District of Arizona
 State of Arizona
 County of Gila—ss.

RAYMOND L. NIER, being duly sworn, deposes and says that he is one of the defendants named in the above entitled action; that he has read the foregoing Answer and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

RAYMOND L. NIER

Subscribed and sworn to before me this 31st day of August, 1931.

[Seal]

W. B. NASH

Notary Public. My Commission
 expires March 17, 1934.

[Endorsed]: Filed Sept. 2, 1931. R. W. Smith,
 Referee. [65]

[Title of Court and Cause.]

ANSWER OF J. ALLEN WELLS TO TRUS-
 TEE'S PETITION AND TO COURT'S OR-
 DER TO SHOW CAUSE.

State of Arizona
 County of Maricopa—ss.

J. ALLEN WELLS, being first duly sworn, on oath deposes and says:

That on the 10th day of March, 1930, he purchased from the Windsor Square Development Co., Inc., Lot 22 of Block 3 of Windsor Square, as per map or plat of said Windsor Square recorded in the office of the County Recorder of Maricopa County, Arizona; that the purchase price of said lot was the sum of \$975.00, payable \$250.00 down and \$25.00 per month, including interest; interest on deferred payments to be 8% per annum; that he has paid the sum of \$733.49 on said lot, including interest, and that he fully intends to complete the payments due on said lot as and when they fall due. See Trust #418-85A, c/o Phoenix Title and Trust Co.

J. ALLEN WELLS.

Subscribed and sworn to before me this 1 day of September, 1931.

[Seal]

J. B. FRANCIS

Notary Public. My commission
expires: May 11, 1933.

[Endorsed]: Filed Sept. 2, 1931. R. W. Smith,
Referee. [66]

[Title of Court and Cause.]

ANSWER OF SALT RIVER VALLEY WATER
USERS' ASSOCIATION.

Comes now the Salt River Valley Water Users' Association, a corporation, and answers the order to show cause of trustee's petition to marshal liens and sell free and clear of encumbrances, issued by the Honorable R. W. Smith, Referee in Bank-

ruptcy, and published in the Arizona Weekly Gazette on June 27th, July 4th, July 11th and July 18th, 1931, as follows, to-wit:

Said Salt River Valley Water Users' Association respectfully shows that long prior to the dates when the respective [67] interests of any of the parties to the above entitled proceeding in the property described in the petition of the trustee in bankruptcy above referred to became vested or were initiated, the then owner of a tract of irrigable land, including all of the lots and blocks described in the said petition, subscribed for shares of stock in the said Salt River Valley Water Users' Association, and by subscribing for said shares of stock, irrevocably bound and obligated said land to said Salt River Valley Water Users' Association, and specifically agreed that there might be imposed on said land in accordance with the Articles of Incorporation, By-Laws, and rules and regulations of said Association, assessments against said land, which assessments when made should become a lien upon said lands.

That the following is a copy of Article XIII of the Articles of Incorporation of said Salt River Valley Water Users' Association, which set forth the power and authority of said Association to levy said assessments, and to which the owner of said land subscribing for shares of stock in said Association specifically obligated his said lands, to-wit:

“ARTICLE XIII.

(As amended August 21, 1917)

Section 1. Revenues necessary for the accomplishment of the purposes of this Association shall be derived:

First: From income arising from the sale, lease, or otherwise furnishing electric or other power or power privileges and from the delivery of water for irrigation;

Second: From assessments, so far as they may be from time to time necessary, of the cost of construction, improvement, enlargement, betterment, repairs, operation and maintenance of the irrigation and other works of the Association, or of those under its management, operation and maintenance.

Section 2. The Council shall have power to make and enforce necessary by-laws for the making, levying and collecting and enforcement of assessments and charges for service. [68]

Section 3. The Board of Governors shall, at its regular meeting in May of each year, or at such other time annually as may be fixed by by-laws, estimate the probable cost of the operation, maintenance, repair, enlargement and betterment of the works of the Association and those under its management, care and operation, for the year beginning on the first day of the next ensuing October, including therein any

deficit otherwise unprovided for, and the amount probably necessary to pay the Government the annual installment of the construction cost of the Salt River project, assumed by the Association. It shall also at the same time estimate the probable net income of the Association from all sources, other than that which may be derived from the service of water to its shareholders, if any.

From such estimated cost there shall be deducted the estimated net income, and upon this difference shall be computed the charge to be made to shareholders for the service of irrigating water for the year beginning on the first day of October next ensuing. Such charge shall be based upon the service of each acre foot as the unit of measurement. A minimum charge shall be made against every acre to which stock is appurtenant of a charge, as for the use of, two acre feet, whether used or not by the owner.

The Board may graduate the charge to be made per acre foot of water delivered, increasing the charge per acre foot with the use of each acre foot in excess of two acre feet used by the owner.

The price to be charged per acre foot of water to be served, shall be fixed as nearly as that can be practically done so that the aggregate receipts from that source shall equal, with other amounts applicable thereto, the cost of

operation, maintenance and repair for the year for which such charge is fixed.

Charges for service of water shall be paid in advance of its delivery.

No water shall be delivered in any year beyond the year in which the contract was made for water.

As funds will be necessary for the operation and maintenance of the irrigation works, and to pay the first installment of the cost of construction, upon the taking over by the Association of the project, before the regular annual assessment as above provided can be made, the Board of Governors are directed, as soon as convenient after the execution of the contract with the Government relative to the taking over of, care, operation and maintenance of the project, make the necessary assessment of the funds so needed in the manner now prescribed by the by-laws, so far as they are applicable, but without the preliminary notices therein prescribed. [69]

The by-laws of the Association relating to assessments, so far as they are applicable and not inconsistent with these articles, shall be and remain in force until otherwise provided by the Council.

Section 4. Assessments for funds with which to pay the United States Government for the cost of the construction and acquisition of the

works commonly known as the Salt River Project shall be made against the owners of stock, as the same may be needed therefor. Such assessments shall each be equal against each share of said stock and the land to which it is appurtenant.

Section 5. Assessments for expenditures for purposes that are of benefit to a part only of the shareholders may be specially assessed in proportion to such benefits against such shareholders, but no expenditure to be provided for, or covered by, such special assessment shall be made, or obligation to expend the same incurred, except upon the petition of the holders of two-thirds of the shares to be so specially benefited thereby.

Section 6. Assessments shall become, from time to time as they are made and levied, and, until they are paid or otherwise discharged, shall be and remain a lien on the lands of the shareholders against which they are levied, and upon the shares of stock appurtenant to said lands, and all rights and interests represented by such shares. The manner of fixing the lien and enforcing the same shall be prescribed in the by-laws. In addition to any such provision, the Association may enforce the payment of assessments by suit therefor in a court of competent jurisdiction.

Section 7. Assessments and charges may be so made as to maintain in each year a fund in

the treasury, not to exceed One Hundred Thousand Dollars (\$100,000.00) with which to meet the cost of unexpected damage or injury by flood or otherwise to the project.

Section 8. Except for the ordinary operation, maintenance and repair, no work *shall* be undertaken, purchase made or indebtedness incurred or be authorized during any one year whereof the cost or amount thereof shall exceed One Hundred Thousand Dollars (\$100,000.00), until it shall have first been ratified by at least a majority of the votes cast at an annual election or at an election to be called for that purpose. Special elections may be called and held for such purpose under such by-laws as the Council may prescribe, not inconsistent with these Articles.

Section 9. The Board of Governors shall each year fix the charge to be paid for the delivery of water to the lands, the owners of which are not shareholders of the Association. [70]

In addition to the charges fixed for the delivery of water to shareholders who are served with gravity water only, the Board of Governors shall each year fix an additional charge to meet the additional cost of service of other than gravity water, provided that no lift charge shall hereafter be required from lands under the Highline Canal as now constructed. (As amended April 3, 1923.)

Section 10. The regular assessments and water charges of the Association shall entitle each landowner to have the irrigation water to which his land is entitled delivered to him at the high point of the quarter section or other substantially equivalent service unit established by the Association, and it shall be the duty of the shareholder to provide his own means to convey said water to his land from proper points on project ditches now operated by the Association, provided, that whenever any quarter section or other service unit shall be divided into so many ownerships, or there shall be such failure to provide and maintain proper ditches for the carriage of water within the limits of said quarter section or other service unit, or there shall be such lack of co-operation among the several owners in said quarter section or other service unit as to result in a condition making impracticable the proper distribution of water within such service unit, or causing unnecessary loss or waste of water, or causing flooding of lands or constituting a hindrance to the operation of Association ditches, the Association under such rules and regulations as may be prescribed by the by-laws, may acquire, operate and/or maintain temporarily or permanently, any or all irrigation and/or waste ditches or parts thereof, in such quarter section or other service unit, and may undertake the

service of water to any or all individual tracts within such quarter section or other service unit.

The acquiring of the aforesaid ditches, and/or maintaining them, and distributing water within the limits of such quarter section or other service unit, shall be deemed to be for purposes that are of benefit only to the shareholders served thereby within said quarter section or other service unit, and the cost thereof shall be equitably divided and/or apportioned among such lands and the owners thereof as may be provided by the by-laws of the Association. The estimated amount of such cost as divided and apportioned under the by-laws, shall be added by the Association to the several assessments levied on the lands within such quarter section or other service unit, and/or to the rate charged said lands for water in excess of two acre feet per annum, and shall be collected as other assessments and excess water charges are collected. (Adopted April 3, 1928.)”

That in pursuance of the authority vested in it by its Articles of Incorporation, the said Salt River Valley Water Users' [71] Association has caused to be levied and recorded in the office of the County Recorder of Maricopa County, Arizona, assessments to secure the payment of principal and interest upon bond issues of said Association, which bond issues are for the following amounts, to-wit:

Mormon Flat Bond issue,	\$1,800,000.00
Horse-Mesa Bond issue,	\$2,500,000.00
Stewart Mountain Bond issue,	\$4,400,000.00
Refunding Bond issue,	\$3,000,000.00

and that in addition to the above, the owner of said lands at the time he subscribed for stock in said Salt River Valley Water Users' Association, also filed an instrument in writing known as a Water Application, by which he secured for said lands the right to water from the Salt River Arizona Reclamation Project, and obligated his said lands to pay their pro rata part of the construction costs of the Salt River Valley Project, and that a considerable portion of said construction costs still remain unpaid.

That the amount for which said lands are obligated to the United States of America under said water application, and under the assessment for said Mormon Flat Bonds, said Horse Mesa bonds, said Stewart Mountain bonds, and said Refunding bonds, is not set forth herein for the reason that said Salt River Valley Water Users' Association has no control over the assessments for said purposes, and that in order to legally fix and determine the amount said lands are obligated to pay to the United States and for said bond issues, it is necessary that the United States of America and the trustees under the respective bond issues be made parties to this proceeding. That none of the pay-

ments due to the United States, and none of the payments due on principal or interest on any of said bond issues which remain unpaid or due at the present time. That all past due payments to the United States, and all past [72] due payments on said bond issues have been fully paid by said Salt River Valley Water Users' Association. That said Salt River Valley Water Users' Association, under agreements with the United States of America, and with the trustees and holders of bonds of said bond issues, is obligated and bound to make all of said payments as they become due, and if financially able to do so, will make said payments.

That under its Articles of Incorporation, and and particularly Article XIII thereof, as above set forth, the said Salt River Valley Water Users' Association will in the future continue to levy assessments upon the lands described in the afore-said trustee's petition, as such assessments may become necessary for the purposes of said Salt River Valley Water Users' Association.

That there have been heretofore levied against the following described lots in the said Windsor Square Subdivision, assessments by said Salt River Valley Water Users' Association which are delinquent and remain unpaid. That the lots in said Windsor Square Subdivision against which there are at the present time delinquent unpaid assessments, are the following lots:

Block 1—Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 18 and 19.

Block 2—Lots 3, 4, 5, 6, 8, 10, 11, 12, 13, 15,
16, 17, 18, 19, 20, 21, 22, 23, 25, 27,
29, 31, 32, 33, 34, 36, 38, 40, 41, 42.

Block 3—Lots 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13,
14, 15, 16, 18, 19, 20, 21, 23, 25, 26,
27, 28, 29, 30, 31, 32, 33, 34, 35, 36,
37, and 38.

Block 4—Lots 3, 5, 7, 8, 9, 10, 11, 12, 13, 14,
15, 16, 17, 19, 20, 21, 25, 26, 27 and 28.

[73]

Block 5—Lots 3, 5, 6, 9, 11, 13, 15, 16, 17, 19,
22 and 23.

Block 6—Lots 1, 3, 4, 5, 7, 8, 9, 10.

Block 7—Lots 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13,
14, 19, 21, 27, 29, 31, 33, 34, 35, 37
and 38.

Block 8—Lots 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12,
13, 15, 17, 18, 20, 22, 23, 27, 30, 32,
33, 34, 35, 36, 37, 38, 39, 40, 41, 42,
43, 44, 45.

Block 9—Lots 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 21, 24, 27,
and 28.

And roads in Windsor Square, Sec-
tion 17, Township 2 North, Range 3
East, Gila and Salt River Base and
Meridian, Maricopa County, Arizona.

That the assessments of said Salt River Valley
Water Users' Association against the above lots

were levied and assessed as a unit, and not separately against each lot, for the reason that at the time when said lots were levied and assessed all of said lots were in common ownership, and that the amount of said assessments and the penalties thereon, if paid on or prior to the 6th day of September, 1931, are as follows:

Season 1929-30, \$2.00 per acre. Assessment, \$106.00. Penalty, \$18.02. Total, \$124.02	
Season 1930-31, \$4.00 per acre. Assessment, \$212.00. Penalty, \$23.32. Total, \$235.32	
1931	_____
Total delinquency up to September 6,	\$359.34

That for each month after September 6th, 1931, the above amounts remain unpaid, a penalty of one per cent per month on the amount of principal delinquent is added.

That an assessment of \$3.40 per acre in addition to the above has been levied due September 6th, 1931, delinquent October 6th, 1931, on account of the irrigation season 1931-32, and a further assessment will be payable each six months thereafter on such amount as the needs of the said Salt River Valley [74] Water Users' Association may require.

That it is not within the power of said Salt River Valley Water Users' Association to consent to a sale, free and clear of the lien of the United States for construction charges, or the lien vested in the various trustees under the various bond issues to

secure future payments, nor is it within the power of said Salt River Valley Water Users' Association to consent to a release of the obligation of said lands for future assessments and payments to said Salt River Valley Water Users' Association. That as to the past due and delinquent assessments, and as to the assessments becoming due and payable on September 6th, 1931, and delinquent October 6th, 1931, said Association is willing that said lands may be sold free and clear of said liens upon condition that there be impounded from the sale of said lands a sum sufficient to pay the Association the amounts due, together with the penalties thereon. That said lien of the Association for said amounts is prior and superior to all other liens and claims against said lands, excepting only any liens or claims due to the United States of America and the lien of the State of Arizona for taxes.

WHEREFORE, said Salt River Valley Water Users' Association prays that an order be made and entered herein to establish the rights of said Association as hereinabove set forth, and make such other provision relating thereto as may be right and proper.

KIBBEY, BENNETT, GUST,
SMITH & ROSENFELD

Attorneys for Salt River Valley
Water Users' Association. [75]

State of Arizona,
County of Maricopa—ss.

J. L. Gust being first duly sworn on oath deposes and says:

That he is the legal advisor of the Salt River Valley Water Users' Association, the corporation that has made the above and foregoing answer to order to show cause, and makes this affidavit for and on behalf of said corporation;

That affiant has read the said answer, and that the matters and things therein stated are true to the best of his knowledge and belief.

J. L. GUST.

Subscribed and sworn to before me this 2nd day of September, 1931.

[Seal]

ETHOL FROST

Notary Public. My commission expires Feb. 28, 1932.

[Endorsed]: Filed Sept. 2, 1931. R. W. Smith, Referee. [76]

[Title of Court and Cause.]

APPEARANCE OF E. L. GROSE IN CONFORMITY WITH ORDER OF TRUSTEE IN BANKRUPTCY. [77]

[Set out in full in the STATEMENT OF EVIDENCE at page 224 of this printed transcript.]

[Title of Court and Cause.]

ANSWER OF LIEN-HOLDER MARGARET B. BARRINGER TO TRUSTEE'S PETITION TO MARSHAL LIENS AND SELL. AND PETITION IN INTERVENTION. [83]

[Set out in full in the STATEMENT OF EVIDENCE at page 189 of this printed transcript.]

[Title of Court and Cause.]

AMENDED ANSWER OF PHOENIX TITLE AND TRUST COMPANY TO ORDER TO SHOW CAUSE OF TRUSTEE'S PETITION TO MARSHAL LIENS AND SELL FREE AND CLEAR OF ENCUMBRANCES.

[129]

[Set out in full in the STATEMENT OF EVIDENCE at page 323 of this printed transcript.]

[Attached to Answer are Exhibits A, B, C, D, E, set out at pp. 423, 455, 328, 198, 199 respectively of this printed transcript.]

[Title of Court and Cause.]

MOTION FOR FURTHER AND BETTER PARTICULARS OF AMENDED ANSWER OF PHOENIX TITLE AND TRUST COMPANY, a corporation.

COMES NOW GEORGE E. LILLEY, Trustee in Bankruptcy, of the estate of Windsor Square

Development, Inc., a corporation, bankrupt, and moves this court, pursuant to the provisions of Equity Rule Number 20, that the said Phoenix Title and Trust Company, a corporation, be ordered to furnish further and better particulars of the matters stated in the Amended Answer of the said Phoenix Title and Trust Company, to the Order to Show Cause on Trustee's Petition to Marshal Liens and Sell the Property Free and Clear of Encumbrances filed herein on the 19th day of October, 1931, in [157] the following respects:

1. That said Phoenix Title and Trust Company set up with particularity, all moneys which have been paid to it, from and after the adjudication of bankruptcy herein on the 25th day of October, 1930, out of the proceeds coming into its hands through, or under, an alleged Declaration of Trust, together with a full and complete statement of all the amounts received and disbursed by it since the date of said adjudication in bankruptcy in connection with, or by reason of, an alleged Declaration of Trust as set forth in Paragraph VII of its Amended Answer to the Order to Show Cause filed herein, as aforesaid.

2. As to all payments alleged to have been made and all amounts alleged to be due and unpaid upon a certain note of Margaret B. Barringer, as set forth and alleged in Paragraph VIII of the Amended Answer of the said Phoenix Title and

Trust Company to the Order to Show Cause on Trustee's Petition to Marshal Liens and Sell Free and Clear of Encumbrances filed herein, as aforesaid.

And the said George E. Lilley, Trustee as aforesaid, further moves that an Order be entered that the said Phoenix Title and Trust Company, a corporation, file such particulars and serve upon the said George E. Lilley, Trustee as aforesaid, a copy of the same, within 10 days after the entry of said Order.

Dated this 23rd day of November, 1931.

THOMAS W. NEALON

Attorney for George E. Lilley, Trustee in Bankruptcy of the Estate of Windsor Square Development, Inc., a corporation, Bankrupt.

Received copy of the within, this 23 day of November, 1931.

KIBBEY, BENNETT, GUST,
SMITH & ROSENFELD

Attorney for Phoenix Title and
Trust Company.

[Endorsed]: Filed Nov 23, 1931. R. W. Smith,
Referee. [158]

[Title of Court and Cause.]

MOTION TO STRIKE OUT REDUNDANT AND
IMPERTINENT MATTER FROM AMEND-
ED ANSWER OF PHOENIX TITLE AND
TRUST COMPANY TO ORDER TO SHOW
CAUSE ON TRUSTEE'S PETITION TO
MARSHAL LIENS AND SELL. [159]

[Set out in full in the STATEMENT OF EVI-
DENCE at page 338 of this printed transcript.]

[Title of Court and Cause.]

MOTION TO STRIKE OUT REDUNDANT AND
IMPERTINENT MATTER FROM THE AN-
SWER OF MARGARET B. BARRINGER
TO THE ORDER TO SHOW CAUSE ON
TRUSTEE'S PETITION TO MARSHAL
LIENS AND SELL. [162]

[Set out in full in the STATEMENT OF EVI-
DENCE at page 199 of this printed transcript.]

[Title of Court and Cause.]

DEFAULTS OF GLEN E. WEAVER, E. R.
FOUTZ, LUCILLE NICHOLS, NELLIE B.
WILKINSON, SUSIE M. WALLACE AND
THOMAS J. TUNNEY.

* * * * *

Mr. NEALON: * * *

If your Honor please, may a default be entered
against such of the defendants as have not ap-

peared or made any answer, and we will make the formal entry later in the proceedings. I just think a default entry should be made at this time.

The REFEREE: Who are the parties?

Mr. NEALON: Now, we would have to check back to see that. There is no intention on the part of the Trustee to foreclose any rights they might have in any way.

Mr. Taylor can testify to the facts and some time during this proceeding we will put him on for that purpose. That statement can go right into the record in regard to it.

The REFEREE: All right. Default may be entered without specifying the parties affected; all parties who have failed to answer.

Mr. NEALON: All parties who have failed to answer?

The REFEREE: Yes.

* * * * *

[Endorsed]: Filed Sep 28 1933. J. Lee Baker, Clerk United States District Court for the District of Arizona. [164]

Volume 1, Reporter's Transcript. Filed Apr 12, 1932. R. W. Smith, Referee.

[Title of Court and Cause.]

ORDER AND DECREE FIXING AND MARSHALLING LIENS, DETERMINING PRIORITY THEREOF AND ADJUDGING CERTAIN ASSERTED LIENS, AND INTERESTS NULL AND VOID. [165]

[Set out in full in the STATEMENT OF EVIDENCE. . . .]

[Title of Court and Cause.]

EXCEPTIONS TO ORDER AND DECREE FIX-
ING AND MARSHALLING LIENS, ET
CETERA.

COMES NOW W. R. WELLS, by his attorneys of record, and excepts to the order and decree of the Referee fixing and marshalling liens, determining priority thereof and adjudging certain asserted liens and interests null and void, or to so much thereof as appears on page 13 paragraph marked *Sixth*, and to so much thereof as appears on page 19 the first paragraph thereof and to the inclusion of Lot 2 in Block 1 on page 22 as one of the lots ordered and adjudged sold by the Trustee in Bankruptcy, and in support of these exceptions the said W. R. Wells respectfully submits that he filed an answer herein setting up the said Lot 2 in Block 1 which had been sold to him by the Phoenix Title & Trust Company, as trustee for the Windsor Square Development Company, Inc., a corporation; that he had fully paid for said lot and a general warranty deed in fee simple had been issued and delivered to the said W. R. Wells, and upon the hearing of said cause the said Wells introduced evidence in support of the allegations of said answer and no controverting pleading or proof to the answer and the proof of the said Wells was ever introduced into the record. [190]

It is further shown to the court that under the answer filed by said W. R. Wells and under the proof introduced by him that he purchased Lots 1

and 20 in Block 1 under a conditional sales contract and that he still owed a balance on each of said lots, but that neither of said lots are mentioned in the order and decree of the Referee herein.

HAYES, STANFORD, WALTON,
ALLEE & WILLIAMS,
By MATT S. WALTON

Attorneys for W. R. Wells.

Due service of copy of foregoing Exceptions to Order and Decree Etc. is hereby admitted this day of Sept. 1932.

THOMAS W. NEALON

Attorney for Trustee

[Endorsed]: Filed Sept. 27, 1932. R. W. Smith,
Referee. [191]

[Title of Court and Cause.]

EXCEPTIONS OF RESPONDENT MARGARET
B. BARRINGER TO REFEREE'S ORDER
AND DECREE FIXING AND MARSHAL-
LING LIENS, DETERMINING PRIORITY
THEREOF AND ADJUDGING CERTAIN
ASSERTED LIENS, AND INTERESTS
NULL AND VOID. [192]

[Set out in full in the STATEMENT OF EVI-
DENCE at page 255 of this printed transcript.]

[Title of Court and Cause.]

EXCEPTIONS OF PHOENIX TITLE AND TRUST COMPANY TO ORDER AND DECREE FIXING AND MARSHALLING LIENS, DETERMINING PRIORITY THEREOF AND ADJUDGING CERTAIN ASSERTED LIENS, AND INTERESTS NULL AND VOID, MADE AND ENTERED BY R. W. SMITH, REFEREE, ON SEPTEMBER 17, 1932. [197]

[Set out in full in the STATEMENT OF EVIDENCE at page 343 of this printed transcript.]

[Title of Court and Cause.]

PETITION OF MARGARET B. BARRINGER TO REVIEW ORDER AND DECREE FIXING AND MARSHALLING LIENS, DETERMINING PRIORITY THEREOF AND ADJUDGING CERTAIN ASSERTED LIENS, AND INTERESTS NULL AND VOID, MADE AND ENTERED BY R. W. SMITH, REFEREE, ON SEPTEMBER 17, 1932. [205]

[Set out in full in the STATEMENT OF EVIDENCE at page 259 of this printed transcript.]

[Title of Court and Cause.]

PETITION OF PHOENIX TITLE AND TRUST COMPANY TO REVIEW ORDER AND DECREE FIXING AND MARSHALLING LIENS, DETERMINING PRIORITY THEREOF AND ADJUDGING CERTAIN ASSERTED LIENS, AND INTERESTS NULL AND VOID, MADE AND ENTERED BY R. W. SMITH, REFEREE, ON SEPTEMBER 17, 1932. [243]

[Set out in full in the STATEMENT OF EVIDENCE at page 353 of this printed transcript.]

[Title of Court and Cause.]

ORDER AND DECREE FIXING AND MARSHALLING LIENS, DETERMINING PRIORITY THEREOF AND ADJUDGING CERTAIN ASSERTED LIENS, AND INTERESTS NULL AND VOID.

THIS CAUSE having come on for hearing on the 25th day of November, 1931, upon the petition of George E. Lilley, Trustee in Bankruptcy of the above entitled estate to marshal liens and sell property free and clear of encumbrances, and upon the answers and appearances of alleged lienholders; Thomas W. Nealon and Alice M. Birdsall appearing as attorneys for said Trustee in Bankruptcy in support of said petition; [260] John L. Gust, Esq., appearing as attorney for respondent, Phoenix Title

& Trust Company, as well as for the Salt River Valley Water Users' Association; W. H. MacKay, Esq., appearing as attorney for respondent, Margaret B. Barringer; Gene Cunningham, Esq., appearing as attorney for respondent, E. L. Grose; Matt Walton, Esq., appearing as attorney for respondent W. R. Wells; W. W. Clark, Esq., appearing as attorney for respondent, County of Maricopa, State of Arizona, Mitt Smis, State Treasurer and John D. Calhoun, County Treasurer; and respondents, Raymond L. Nier and J. Allen Wells, although having filed their answers herein, not being present or represented by counsel;

THEREUPON the motion of the Trustee in Bankruptcy to strike from the answer of respondent, Margaret B. Barringer, certain matter as redundant and impertinent, and the motion of the Trustee in Bankruptcy to strike from the amended answer of respondent, Phoenix Title & Trust Company certain matter as redundant and impertinent, were heard, and said motions were granted, with leave to each of said respondents to amend said pleadings within ten days from said date.

THEREUPON evidence was introduced on behalf of said various respondents in support of their respective pleadings filed herein, and by said Trustee in Bankruptcy in support of said petition; said hearings being continued from day to day, and the said evidence being concluded upon the 18th day of December, 1931, upon which date it was stipulated in open court that the matter would be submitted upon briefs, the case to be deemed submitted

at the end of ten days after the filing of the answering brief of the Trustee in Bankruptcy, and said answering brief of said Trustee in Bankruptcy having been filed herein on the 10th day of March, 1932, said cause was on the 21st day of March, 1932, submitted for determination; [261]

NOW, after due consideration, upon the pleadings and the evidence, I do find the following facts:

I.

That Windsor Square is a subdivision in the County of Maricopa, State of Arizona, and comprises all the property described in the petition to marshal liens and sell of George E. Lilley, Trustee, herein, as well as other lots not included in said petition of said Trustee.

II.

That on the 6th day of June, 1931, George E. Lilley, Trustee in Bankruptcy of the above entitled estate, filed herein his petition to marshal liens and sell free and clear of encumbrances, the following described property: [262]

The following lots in Windsor Square, according to the Map or Plat of said Windsor Square, recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 20 of Maps at page 37 thereof:

Block 1—Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 18, 19.

Block 2—Lots 3, 4, 5, 6, 8, 10, 11, 12, 13, 15,
16, 17, 18, 19, 20, 21, 22, 23, 27, 29, 31,
32, 33, 34, 36, 38, 41, 42.

Block 3—Lots 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 23, 25, 26,
27, 28, 29, 30, 32, 33, 34, 35, 36, 39.

Block 4—Lots 3, 7, 8, 9, 11, 12, 13, 14, 15, 16,
17, 19, 20, 21, 25, 26, 27, 28.

Block 5—Lots 3, 5, 6, 9, 11, 13, 15, 16, 17, 19,
22, 23.

Block 6—Lots 1, 3, 5, 7, 8, 9, 10.

Block 7—Lots 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13,
14, 19, 21, 27, 29, 31, 33, 34, 35, 37,
38.

Block 8—Lots 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12,
13, 15, 17, 18, 20, 22, 23, 30, 32, 33,
34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44.

Block 9—Lots 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 21.

Block 1—Lots 2, 16.

Block 3—Lot 22.

Block 4—Lots 2, 24.

Block 7—Lots 15, 17, 23, 25, 26.

Block 8—Lot 9. [264]

That thereafter and on the 18th day of June, 1931,
at a duly called meeting of creditors to consider

said petition, of which meeting due notice was given to all creditors, including Margaret B. Barringer, and no adverse interest appearing at said meeting, an order of sale of said property was made, from which order of sale no review has been taken; that personal service of said order of sale was made on the attorney for Margaret B. Barringer on June 30, 1931; that order to show cause requiring each of the parties defendant named in said petition to appear and set up their rights, if any, in and to said premises, on or before the 2nd day of September, 1931, was duly made on the 18th day of June, 1931, and service of said order to show cause was thereafter duly made upon each and every one of the defendants named in said petition of said Trustee in Bankruptcy.

That answers to said order to show cause and said petition of said Trustee in Bankruptcy were within the time required in said order to show cause, filed by Margaret B. Barringer, Phoenix Title and Trust Company, a corporation, Salt River Valley Water Users' Association, a corporation, E. L. Grose, W. R. Wells, County of Maricopa, State of Arizona, Mitt Sims, State Treasurer, John D. Calhoun, County Treasurer, Raymond L. Nier and J. Allen Wells.

That by stipulation of counsel for Central Arizona Light & Power Company, a corporation, and counsel for the Trustee in Bankruptcy, George E. Lilley, it was agreed that without formal appearance of said corporation in this proceeding the rights of said Central Arizona Light and Power

Company in said premises might be determined in this proceeding to be for easement over streets, alleys and lands of Windsor Square Subdivision, as shown in the recorded plat of Windsor Square and other agreements for easements over said premises, all of [265] record in the office of the Recorder of Maricopa County, Arizona.

That the respondents, Glen E. Weaver, E. R. Foutz, Lucille Nichols, Nellie B. Wilkinson, Susie M. Wallace and Thomas J. Tunney filed no answer and made no appearance in answer to said order to show cause, and default was duly entered against them; that said Tunney has no interest in or lien upon any part of said property.

III.

That prior to the filing of the petition in bankruptcy herein, and at the time of the filing of said petition in bankruptcy, on the 25th day of October, 1930, all of the property described in the petition of George E. Lilley, Trustee in Bankruptcy herein, to marshal liens, was in the possession of said bankrupt, and that said property was scheduled by said bankrupt in its amended schedules filed in said bankruptcy proceedings on the 12th day of December, 1930.

IV.

That George E. Lilley is the duly elected, qualified, and acting Trustee in Bankruptcy of the above entitled bankrupt estate, and has been since the 15th day of November, 1930.

V.

That immediately upon qualifying as such Trustee of said bankrupt estate, said George E. Lilley took possession of said property described in said petition, and ever since has had, and now has possession of said property.

VI.

That on the 12th day of January, 1931, Walter Martin, Eben Lane and L. R. Bailey, the appraisers regularly appointed by this Court returned into said Court their inventory and appraisal of the property described in the Trustee's petition herein and fixed the value of said property at the sum of \$135,232.11, and that [266] said sum of \$135,232.11 was then and is now the fair and reasonable value of said property.

VII.

That by a transaction which was consummated on or about the 14th day of January, 1929, L. D. Owens, Jr., H. C. Dinmore and S. W. Mills, all married men, purchased the property subsequently platted as Windsor Square, which included the property described in the petition of the Trustee in Bankruptcy herein, together with other property not included in said petition, for the price of \$105,000.00, paying the consideration for said property by the payment of Twenty Thousand Dollars (\$20,000.00) in cash, and the assumption of the payment of a note in the sum of Eighty-five Thousand Dollars (\$85,000.00) executed by Thomas J. Tunney on December 20, 1928, payable to Margaret B. Barringer,

and that immediately upon the consummation of said transaction, said purchasers went into possession of the property described in Trustee's petition and commenced improving the same.

VIII.

That said Thomas J. Tunney, who on December 20, 1928, executed a note for Eighty-five Thousand Dollars (\$85,000.00) to Margaret B. Barringer, and which note for Eighty-five Thousand Dollars (\$85,000.00) is set up by said Margaret B. Barringer in her pleadings in this proceeding as the basis of a claim of lien by her on the property described in Trustee's petition, at no time has had and has not now any interest, either legal or equitable, in the property involved in these proceedings; that said Thomas J. Tunney, on December 20, 1928, was and at the present time, is an employee of the Phoenix Title and Trust Company, and acted as a "dummy" in the above transaction, for a consideration of Twenty Dollars (\$20.00) paid to him; that said Tunny at no time held written [267] authorization from any parties to act in their behalf.

IX.

That all the rights and interest of said purchasers, Owens, Dinmore and Mills, and of their respective wives, in the property described in the petition of the Trustee herein, were, before the filing of the petition in bankruptcy herein, transferred to the bankrupt.

X.

That the claims of various creditors filed in these proceedings for indebtedness incurred by the predecessors of the bankrupt in connection with the improvement of Windsor Square, were assumed by the bankrupt prior to the filing of the petition in bankruptcy herein.

XI.

That the bankrupt, and its predecessors in interest, namely, said Owens, Dinmore and Mills, spent in actual improvements upon the property known as Windsor Square, and which embraced all of the property described in the petition of the Trustee in Bankruptcy herein, said improvements consisting, among other things, of grading, paving, curbing, planting of trees, shrubbery and installing an electric lighting system and a water system, a sum in excess of Ninety Thousand Dollars (\$90,000.00); that there have been filed and allowed in said bankrupt estate claims of unsecured creditors for amounts still due them for improvements so made upon the property known as Windsor Square, aggregating an amount in excess of One Thousand Dollars (\$1,000.00).

XII.

That the respondents, Margaret B. Barringer and Phoenix Title and Trust Company permitted the bankrupt and its predecessors in interest to exercise dominion over, retain possession of, and hold themselves out to the public in general [268] and numerous creditors in particular, as the owners

of, the property known as Windsor Square and which embraced all of the property described in the petition of the Trustee in Bankruptcy herein, and that in reliance thereon credit was extended to the bankrupt and its predecessors in interest by creditors whose claims have not been paid and which claims have been filed and allowed in the bankruptcy proceedings.

XIII.

That the only liens existing against the property described in the petition of the Trustee in Bankruptcy herein, and their respective order and amounts, and the conditions of each of same, and the only interests of the various other respondents in said property, and the only claims against the proceeds thereof are specifically set forth as follows:

First: That there are unpaid taxes due upon the lands described herein amounting to the sum of One Thousand Four Hundred Ten Dollars and Forty-six cents (\$1,410.46), and a tax lien for said amount against the premises described in the petition of the Trustee in Bankruptcy herein exists in favor of the State of Arizona and County of Maricopa.

Second: That the Salt River Valley Water Users' Association is a corporation, duly organized under the laws of Arizona, for the purpose of handling matters connected with the distribution of water under the Salt River Valley Project, the lands described herein being within said project and dealing with the United States Government in respect to the amounts due thereon for the construction of the Roosevelt Dam and Reservoir, and all other matters

connected with the irrigation of lands under the Salt River Valley Project, and fixing and levying the assessments due the Government for the construction thereof, and for fixing and collecting all sums due by the owners of lands [269] within that project for the distribution of water therein; that long prior to the date of these proceedings, the then owner of the land which included all the lands described in the petition of the Trustee in Bankruptcy herein, subscribed for shares of stock in the Salt River Valley Water Users' Association, and by so subscribing bound and obligated said land to said Salt River Valley Water Users' Association and agreed that assessments might be levied which should be a lien on said lands; that by virtue thereof the said Salt River Valley Water Users' Association holds a lien upon the premises described herein for said assessments and for unpaid water rents and assessments, which amounted on the 6th day of September, 1931, to the sum of Three Hundred Fifty-Nine Dollars and Thirty-Four Cents (\$359.34); together with such additional sums and penalties as have accrued thereon since September 6, 1931, all of which sums are secured by a lien on the lands herein described; and that said lands are obligated and a lien exists upon same for future assessments and water rents to said Salt River Valley Water Users' Association.

Third: That the Central Arizona Light & Power Company is a public utility corporation and as such distributes electric light and power upon the premises described herein, and for such purposes has

certain easements over streets, alleys and lands within Windsor Square, all of which more fully appears by the recorded plat of Windsor Square in Book 20 of Maps, page 37, Maricopa County Records, and by subsequent agreements relating thereto, said subsequent agreements being recorded respectively in Book 40 of Miscellaneous Records at page 54 thereof, and in Book 41 of Miscellaneous Records at page 211 thereof, Maricopa County Records, and said easements rights as stated therein are hereby confirmed and recognized [270] and the sale of said property shall be made subject to the easement rights as set forth in said Map and said recorded agreements.

Fourth: That Margaret B. Barringer advanced certain sums of money, amounting in the aggregate to the sum of One Thousand Nine Hundred Fifty-Seven and $93/100$ Dollars (\$1,957.93) for the payment of taxes and for the preservation of said property, said amounts being advanced prior to the adjudication in bankruptcy herein, and she is entitled to repayment of said sum of One Thousand Nine Hundred Fifty-Seven and $93/100$ Dollars (\$1,957.93); and upon the sale of said property free and clear of liens as heretofore ordered by this Court, her claim for repayment of said amount should be transferred to the proceeds thereof, subsequent and inferior, however, to the liens hereinabove found and determined.

Fifth: That E. L. Grose and Maude M. Grose, his wife, were purchasers under contract of sale of Lot 1, Block 4 of Windsor Square, for the total

purchase price of \$1,775.00, upon which they have paid the sum of \$989.00; and of Lot 2, Block 4 of Windsor Square, for the total purchase price of \$1,675.00, upon which they have paid the sum of \$725.50.

That said lots are a part of the property described in the petition of the Trustee in Bankruptcy herein, and that said contracts of purchase were entered into and said payments made thereupon, relying upon the representations made by the owners of said property that certain improvements consisting of paving in front of said property, installing lights in said subdivisions and installation of a fountain in a park in said subdivision would be made and completed; that said improvements were not completed and that by reason of said [271] failure to make said improvements the value of said lots was decreased; that the value of said Lot One (1), Block Four (4) of said Windsor Square by reason of said failure to make said improvements as agreed upon is not in excess of the sum already paid therefor by said E. L. Grose and Maude M. Grose, his wife, towit, Nine Hundred Eighty-Nine Dollars (\$989.00), and that the value of said Lot Two (2), Block Four (4), Windsor Square, by reason of said failure to make said improvements as agreed upon is not in excess of the sum already paid therefor by said E. L. Grose and Maude M. Grose, his wife, towit, Seven Hundred Twenty-Five Dollars and Fifty Cents (\$725.50).

That said E. L. Grose and Maude M. Grose, his wife, are entitled to have executed to them a deed

for said lots and the cancellation of the contracts of purchase entered into by them.

Sixth: That W. R. Wells is a purchaser under a conditional sale contract of Lot Two (2) Block One (1), Windsor Square, which property is a part of the property described in the petition of the Trustee in Bankruptcy filed herein, and that at the time of the filing of the petition in bankruptcy herein, to-wit, the 25th day of October, 1930, there was due upon said contract of purchase the sum of Two Hundred Fifty Dollars (\$250.00); that no part of said amount of Two Hundred Fifty Dollars (\$250.00) has been paid by said W. R. Wells to the Trustee in Bankruptcy; that said trustee in Bankruptcy is entitled to sell said Lot two (2) Block One (1) in Windsor Square aforesaid, subject to such rights as said W. R. Wells has in said property under said conditional sales contract aforesaid.

[272]

Seventh: That Raymond L. Nier is a purchaser under a conditional sale contract of Lot Sixteen (16), Block One (1) of Windsor Square which is a part of the property described in the petition of the Trustee in Bankruptcy herein, upon which contract there was due at the time of the filing of the petition in bankruptcy herein, the sum of Nine Hundred Seventy-One Dollars and Ninety-Two Cents (\$971.92); that no part of said sum of Nine Hundred Seventy-One Dollars and Ninety-Two cents (\$971.92) has been paid to the said Trustee in Bankruptcy by said Raymond L. Nier, and that said Trustee in Bankruptcy is entitled to sell said Lot

Sixteen (16), Block One (1) of Windsor Square, subject to such rights as said Raymond L. Nier may have in said lot under said conditional sales contract.

Eighth: That J. Allen Wells is a purchaser under a conditional sale contract of Lot twenty-two (22) in Block three (3) of Windsor Square, being a part of the property described in the petition of the Trustee in Bankruptcy herein, upon which conditional sales contract there was due at the date of the filing of the petition in bankruptcy on the 25th day of October, 1930, the sum of Five Hundred Fifty Dollars (\$550.00), with interest thereon from October 10, 1930; that no part of said sum of Five Hundred Fifty Dollars (\$550.00) with interest has been paid to the Trustee in Bankruptcy herein by said J. Allen Wells and that said Trustee in Bankruptcy is entitled to sell said lot twenty-two (22) in Block three (3) of Windsor Square subject to such rights as said J. Allen Wells may have in said premises under said conditional sale contract.

Ninth: That the respondent, Glenn E. Weaver, was a purchaser under a conditional sales contract of Lot 24 in Block 4 of Windsor Square, which property is a part of the property [273] described in the petition of the Trustee in Bankruptcy filed herein, on which certain payments have been made, and that said contract of sale has never been declared forfeited;

That the respondent, E. R. Foutz, was a purchaser under conditional sales contracts of Lots 15

and 26, in Block 7 of Windsor Square, which property is a part of the property described in the petition of the Trustee in Bankruptcy filed herein, on which contracts certain payments have been made, and that said contracts of sale have never been declared forfeited;

That the respondent, Lucille Nichols, was a purchaser under a conditional sales contract of Lot 17 in Block 7 of Windsor Square, which property is a part of the property described in the petition of the Trustee in Bankruptcy filed herein, on which certain payments have been made, and that said contract of sale has never been declared forfeited;

That the respondent, Nellie B. Wilkinson, was a purchaser under a conditional sales contract of Lots 23 and 25 in Block 7 of Windsor Square, which property is a part of the property described in the petition of the Trustee in Bankruptcy filed herein, on which certain payments have been made, and that said contract of sale has never been declared forfeited;

That respondent, Susie M. Wallace, was a purchaser under a conditional sales contract of Lot 9, Block 8 of Windsor Square, which property is a part of the property described in the petition of the Trustee in Bankruptcy filed herein, on which certain payments have been made, and that said contract of sale has never been declared forfeited;

That said Trustee in Bankruptcy is entitled to sell all of said lots subject to the respective rights of said conditional sales purchasers in said property under their respective conditional sales contracts.

XIV.

That no instrument creating or purporting to create a lien upon the property involved in this proceeding in favor of any respondent herein, or of anyone else, save and except those liens hereinabove specifically set forth, has ever been recorded in the public records of Maricopa County, Arizona.

XV.

That neither Margaret B. Barringer nor the Phoenix Title and Trust Company hold any lien against, or interest in the property involved in this proceeding, but that said Margaret B. Barringer is entitled to repayment of the amount of One Thousand Nine Hundred Fifty-seven Dollars and Ninety-three cents (\$1,957.93) advanced by her for the preservation of said property as hereinabove set forth, out of the proceeds of the sale of said property.

XVI.

That numerous creditors hold unsecured claims against said bankrupt estate, (which claims have been filed and allowed therein), who had no actual notice of any asserted claim of lien against the property by Margaret B. Barringer or the Phoenix Title and Trust Company.

XVII.

That at the time of the filing of the petition in bankruptcy herein, there had been paid to Margaret B. Barringer upon the principal of the note executed on December 20th, 1928, by Thomas J.

Tunney, by said Owens, Dinsmore and Mills, or their successors in interest, the bankrupt herein, the principal sum of Fifteen Thousand One Hundred Eighty-five Dollars and Thirty Cents (\$15,185.30), together [275] with all interest due on said note up to the first day of March, 1930, and that the balance of the principal due on said note, to-wit, the sum of Sixty-nine Thousand Eight Hundred Sixty-four Dollars and Seventy Cents (\$69,864.70) principal, and interest thereon at the rate of seven per cent (7%) per annum up to the date of the filing of the petition herein, to-wit, the 25th day of October, 1930, was at the time of the filing of the petition in bankruptcy herein an unsecured indebtedness in favor of said Margaret B. Barringer against said bankrupt estate.

XVIII.

That the "proof of claim of lien" filed herein by Margaret B. Barringer on the 25th day of April, 1931, to which objections as a claim were filed by the trustee in bankruptcy herein, was insufficient as a proof of debt against said estate, and that at the hearing of the trustee's petition to marshal liens in this proceeding on the 25th day of November, 1931, an offer was made by the trustee in bankruptcy to permit said Margaret B. Barringer to amend said proof of claim so as to conform to the provisions of the Bankruptcy Act, which offer was refused by respondent Margaret B. Barringer.

XIX.

That the Phoenix Title and Trust Company has rendered valuable services in the administration of

this bankrupt estate and is entitled to an allowance therefor as an administration expense of this estate.

XX.

That the Phoenix Title and Trust Company had a contract with the predecessors in interest of the petitioner for [276] the rendition of services to be performed by it in the future for their benefit; that said contract did not run with the land and terminated prior to or upon the adjudication in bankruptcy herein and no claim for any damages for the breach thereof has been filed in this bankruptcy proceedings within the time required by law.

XXI.

That the property described in the petition of the trustee in bankruptcy herein should be sold and all liens upon or claims against the same should be transferred to the proceeds thereof in the order and amounts hereinabove determined and set forth.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the prayer of the petition of the trustee in bankruptcy herein be and it hereby is granted, and that the amount and priority of liens and interests in and upon the property described in said trustee's petition are hereby determined to be as follows, in the order named:

Lien for unpaid taxes upon all of said lands in the amount of One Thousand Four Hundred Ten Dollars and Forty-six Cents (\$1410.46) in favor of the State of Arizona and County of Maricopa.

Lien in favor of the Salt River Valley Water Users' Association, a corporation, upon all of said lands, for unpaid water rents and assessments in the amount of Three Hundred Fifty-nine Dollars and Thirty-four Cents (\$359.34), together with penalties and amounts accruing thereon subsequent to [277] September 6, 1931; and that sale of said lands is made subject to lien of said Salt River Valley Water Users' Association for future assessments and water rents for which said lands are obligated.

Easement rights of the Central Arizona Light and Power Company, a public utility corporation, over streets, alleys and lands within Windsor Square Subdivision, in which is included the property described in the petition of the trustee in bankruptcy herein, as shown on the plat of Windsor Square, recorded in the office of the county recorder of Maricopa County in Book 20 of Maps, at page 37 thereof, and as further shown in that agreement recorded in Book 40 of Miscellaneous Records at page 54 thereof; and as further shown in that agreement recorded in Book 41 of Miscellaneous Records, at page 211 thereof, all in the office of the County Recorder at Maricopa County, Arizona, which easement rights, as stated in said instruments are hereby confirmed and the sale of said property is made subject to said easement rights as set forth upon said map and in said recorded instruments hereinabove referred to.

Claim of Margaret B. Barringer for repayment of the sum of One Thousand Nine Hundred Fifty-

seven Dollars and Ninety-three Cents (\$1957.93) for moneys advanced by her for the preservation of said property and the payment of taxes prior to the date of the adjudication in bankruptcy herein, which sum shall be paid out of the proceeds of the sale of the property described in the petition of the trustee in bankruptcy herein, after the liens and rights hereinabove determined.

E. L. Grose and Maude M. Grose, his wife, having made full payment for Lot 1, Block 4 and for Lot 2, Block 4 of Windsor Square, being a portion of the property described in the petition of the trustee in bankruptcy herein, their rights in said lots are recognized and the trustee in bankruptcy is [278] directed to convey title to said lots to said E. L. Grose and Maude M. Grose, his wife, under the order of sale heretofore made herein, subject to the liens and rights hereinabove determined.

W. R. Wells, having purchased under a conditional sales contract Lot 2, Block 1 of Windsor Square, being a portion of the property described in the petition of the trustee in bankruptcy herein, upon which contract of sale there was due on the date of the filing of the petition in bankruptcy herein, to-wit, October 25, 1930, the sum of Two Hundred and Fifty Dollars (\$250.00), the trustee in bankruptcy is directed to sell said Lot 2 in Block 1 of Windsor Square under the order of sale heretofore made herein subject to the rights of said W. R. Wells therein under said contract of sale, and subject to the liens and rights hereinabove determined.

Raymond L. Nier, having purchased under a conditional sales contract Lot 16, Block 1 of Windsor Square, being a portion of the property described in the petition of the trustee in bankruptcy herein, upon which contract of sale there was due on the date of the filing of the petition in bankruptcy herein, to-wit, October 25, 1930, the sum of Nine Hundred Seventy-one Dollars and Ninety-two cents (\$971.92), the trustee in bankruptcy is directed to sell said Lot 16 in Block 1 of Windsor Square under the order of sale heretofore made herein, subject to the rights of said Raymond L. Nier therein under said contract of sale and subject to the liens and rights hereinabove determined.

J. Allen Wells, having purchased under a conditional sales contract Lot 22, Block 3 of Windsor Square, being a portion of the property described in the petition of the trustee in bankruptcy herein, upon which contract of sale there was due on the date of the filing of the petition in bankruptcy herein [279] to-wit, October 25, 1930, the sum of Five Hundred Fifty Dollars (\$550.00) principal, with interest from October 10, 1930, the trustee in bankruptcy is directed to sell said Lot 22, Block 3 of Windsor Square under the order of sale heretofore made herein, subject to the rights of said J. Allen Wells therein under said contract of sale and subject to the liens and rights hereinabove determined.

The following lots in Windsor Square being a portion of the property described in the petition of the trustee in bankruptcy herein, having been pur-

chased by the respective parties named herein under conditional sales contracts which have never been declared forfeited, the trustee in bankruptcy is directed to sell the same subject to the rights of the respective parties in same under conditional sales contracts as follows:

Lot 24, in Block 4, subject to rights of Glenn E. Weaver therein;

Lots 15 and 26, in Block 7, subject to rights of E. R. Foutz therein;

Lot 17, in Block 7, subject to rights of Lucille Nichols therein;

Lots 23 and 25, in Block 7, subject to rights of Nellie B. Wilkinson therein;

Lot 9, in Block 8, subject to rights of Susie M. Wallace therein;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said trustee in bankruptcy, George E. Lilley, is directed to sell free and clear of all encumbrances except as hereinabove specifically set forth, at private sale, and in compliance with the order of sale heretofore on the 18th day of June, 1931, made by this court, the property described in his said petition filed herein as follows:

[280]

The following lots in Windsor Square, according to the Map or Plat of said Windsor Square, recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 20 of Maps at page 37 thereof:

Block 1—Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 18, 19.

Block 2—Lots 3, 4, 5, 6, 8, 10, 11, 12, 13, 15,
16, 17, 18, 19, 20, 21, 22, 23, 27, 29,
31, 32, 33, 34, 36, 38, 41, 42.

Block 3—Lots 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 23, 25, 26,
27, 28, 29, 30, 32, 33, 34, 35, 36, 39.

Block 4—Lots 3, 7, 8, 9, 11, 12, 13, 14, 15, 16,
17, 19, 20, 21, 25, 26, 27, 28. [281]

Block 5—Lots 3, 5, 6, 9, 11, 13, 15, 16, 17, 19,
22, 23.

Block 6—Lots 1, 3, 5, 7, 8, 9, 10.

Block 7—Lots 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13,
14, 19, 21, 27, 29, 31, 33, 34, 35, 37, 38.

Block 8—Lots 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12,
13, 15, 17, 18, 20, 22, 23, 30, 32, 33,
34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44.

Block 9—Lots 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 21.

Block 1—Lots 2, 16.

Block 3—Lot 22.

Block 4—Lots 2, 24.

Block 7—Lots 15, 17, 23, 25, 26.

Block 8—Lot 9. [282]

and that the liens upon and/or claims against said property as hereinabove determined and set forth

are transferred to the proceeds of such sale in the manner, order and for the amounts as so hereinabove determined and set forth; that said sale be made subject to the approval of the Court and that upon the Trustee's return of sale herewith, ten days' notice be given by this Court by mail to creditors and all other parties interested of the hearing for the consideration of the Trustee's report of sale and for an order of distribution hereunder.

Dated this 17th day of Sept., 1932.

R. W. SMITH

Referee in Bankruptcy

We hereby acknowledge notice of the filing with the Referee of the within and foregoing petition of Phoenix Title and Trust Company to review ORDER AND DECREE FIXING AND MARSHALLING LIENS, DETERMINING PRIORITY THEREOF, AND ADJUDGING CERTAIN ASSERTED LIENS AND INTERESTS NULL AND VOID, MADE AND ENTERED BY R. W. SMITH, REFEREE, ON SEPTEMBER 17, 1932, and hereby admit and acknowledge that we have this day received a copy of said petition of Phoenix Title and Trust Company to review said order.

Dated September 29, 1932.

THOMAS W. NEALON

ALICE M. BIRDSALL

Attorneys for George E. Lilley,
Trustee in Bankruptcy.

WM. H. MACKAY

Attorney for respondent, Mar-
garet B. Barringer. [283]

[Title of Court and Cause.]

LETTER FROM REFEREE TO JUDGE TRANSMITTING CERTIFICATE OF REVIEW. [284]

[Set out in full in the STATEMENT OF EVIDENCE at page 161 of this printed transcript.]

[Title of Court and Cause.]

CERTIFICATE OF REVIEW ON PETITION OF MARGARET B. BARRINGER. [289]

[Set out in full in the STATEMENT OF EVIDENCE at page 158 of this printed transcript.]

[Title of Court and Cause.]

CERTIFICATE OF REVIEW ON PETITION OF PHOENIX TITLE & TRUST COMPANY. [292]

[Set out in full in the STATEMENT OF EVIDENCE at page 374 of this printed transcript.]

[Title of Court and Cause.]

SUMMARY OF EVIDENCE. [295]

[Set out in full in the STATEMENT OF EVIDENCE at page 275 of this printed transcript.]

October 1932 Term

At Phoenix

MINUTE ENTRY

of Monday, November 28, 1932.

Honorable F. C. Jacobs,
United States District Judge, Presiding.

[Title of Cause.]

Referee's Certificate of Review on Petition of Margaret B. Barringer, and Referee's Certificate of Review on Petition of Phoenix Title and Trust Company, come on regularly for hearing this day.

Thomas W. Nealon, Esquire, appears as counsel for George E. Lilley, Trustee. Messrs. Ellinwood & Ross, by William H. MacKay, Esquire, appear as counsel for Margaret B. Barringer. John L. Gust, Esquire, by Fred W. Rosenfeld, Esquire, appears as counsel for the Phoenix Title and Trust Company.

Upon motion of said counsel for Margaret B. Barringer, and with the consent of said counsel for the Trustee,

IT IS ORDERED that Referee's Certificate of Review on Petition of Margaret B. Barringer, and Referee's Certificate of Review on Petition of Phoenix Title and Trust Company, be stricken from the Law and Motion Calendar, to be reinstated upon motion of the parties. [331]

[Title of Court and Cause.]

MOTION OF MARGARET B. BARRINGER TO STRIKE REFEREE'S SUMMARY OF EVIDENCE AND FOR ORDER REQUIRING REFEREE TO CERTIFY TRANSCRIPT OF REPORTER'S NOTES AS PART OF RECORD ON REVIEW. [332]

[Set out in full in the STATEMENT OF EVIDENCE at page 377 of this printed transcript.]

[Title of Court and Cause.]

EXCEPTIONS OF RESPONDENT MARGARET B. BARRINGER TO REFEREE'S SUMMARY OF EVIDENCE. [341]

[Set out in full in the STATEMENT OF EVIDENCE at page 385 of this printed transcript.]

[Title of Court and Cause.]

EXCEPTIONS OF RESPONDENT, PHOENIX TITLE AND TRUST COMPANY TO SUMMARY OF EVIDENCE CERTIFIED BY R. W. SMITH, ESQ., REFEREE IN BANKRUPTCY. [351]

[Set out in full in the STATEMENT OF EVIDENCE at page 403 of this printed transcript.]

[Title of Court and Cause.]

MOTION OF PHOENIX TITLE AND TRUST
COMPANY FOR ORDER REQUIRING
REFEREE TO CERTIFY TRANSCRIPT
OF REPORTER'S NOTES AS PART OF
RECORD ON REVIEW. [356]

[Set out in full in the STATEMENT OF EVIDENCE at page 396 of this printed transcript.]

October 1932 Term

At Phoenix

MINUTE ENTRY

of Monday, December 12, 1932

Honorable F. C. Jacobs,
United States District Judge, Presiding.

[Title of Cause.]

Motion of Margaret B. Barringer to Strike Referee's Summary of Evidence and for Order Requiring Referee to Certify Transcript of Reporter's Notes as part of Record on Review, comes on regularly for hearing this day.

Thomas W. Nealon, Esquire, appears as counsel for George E. Lilley, Trustee. Messrs. Ellinwood & Ross, by William H. MacKay, Esquire, appear as counsel for Margaret B. Barringer.

Upon motion of said counsel for the Trustee, and with the consent of said counsel for Margaret B. Barringer,

IT IS ORDERED that said Motion of Margaret B. Barringer to Strike Referee's Summary of Evi-

dence and for Order Requiring Referee to Certify Transcript of Reporter's Notes as part of record on Review, be continued and reset for hearing, Monday, December 19, 1932, at the hour of ten o'clock, A. M. [363]

October 1932 Term

At Phoenix

MINUTE ENTRY

of Monday, December 19, 1932

Honorable F. C. Jacobs,

United States District Judge, Presiding.

[Title of Cause.]

Referee's Certificate on Review; Motion of Margaret B. Barringer to Strike Referee's Summary of Evidence and Petition for Order Requiring Referee to Certify Transcript of Reporter's Notes as part of Record on Review; Motion of Phoenix Title and Trust Company for an Order requiring Referee to Certify Transcript of Reporter's Notes as part of Record on Review; Exceptions of Respondent, Phoenix Title and Trust Company to Referee's Summary of Evidence, and Exceptions of Respondent, Margaret Barringer to Referee's Summary of Evidence, come on regularly for hearing this day.

Messrs. Ellinwood & Ross, by William H. MacKay, Esquire, appear as counsel for respondent, Margaret B. Barringer. No appearance is made on behalf of the Phoenix Title & Trust Company or the Referee.

IT IS ORDERED that said Referee's Certificate on Review; Motion of Margaret B. Barringer to Strike Referee's Summary of Evidence and Petition for Order Requiring Referee to Certify [364] Transcript of Reporter's Notes as part of Record on Review; Motion of Phoenix Title and Trust Company for an Order requiring Referee to Certify Transcript of Reporter's Notes as part of Record on Review; Exceptions of Respondent, Phoenix Title and Trust Company to Referee's Summary of Evidence, and Exceptions of Respondent, Margaret Barringer to Referee's Summary of Evidence, be continued and reset for hearing, Tuesday, January 3, 1933, at the hour of ten o'clock, A. M. [365]

October 1932 Term

At Phoenix

MINUTE ENTRY

of Tuesday, January 3, 1933

Honorable F. C. Jacobs,
United States District Judge, Presiding.

[Title of Cause.]

Referee's Certificate on Review; Motion of Margaret B. Barringer to Strike Referee's Summary of Evidence and for Order requiring Referee to Certify Transcript of Reporter's Notes as part of Record on Review; Motion of Phoenix Title and Trust Company for an Order Requiring Referee to certify Transcript of Reporter's Notes as part of Record on Review; Exceptions of Respondent, Phoenix Title and Trust Company, to Referee's Summary

of evidence, and Exceptions of Respondent, Margaret B. Barringer to Referee's Summary of Evidence, come on regularly for hearing this day.

Messrs. Ellinwood & Ross, by William H. MacKay, Esquire; appear as counsel for Respondent, Margaret B. Barringer, Thomas W. Nealon, Esquire, appears as counsel for George E. Lilley, Trustee.

Upon motion of said counsel for Respondent, Margaret B. Barringer,

IT IS ORDERED that said Referee's Certificate on Review; Motion of Margaret B. Barringer to Strike Order Requiring Referee to certify Transcript of Reporter's Notes as part of Record on Review; Motion of Phoenix Title and Trust Company, for an Order Requiring Referee to certify Transcript of Reporter's Notes as part of Record on Review; Exceptions of Respondent, Phoenix Title and Trust Company, to Referee's Summary of Evidence, and Exceptions of Respondent, Margaret B. Barringer to Referee's [366] Summary of Evidence, be, and the same are hereby continued and reset for hearing, Monday, January 16, 1933, at the hour of ten o'clock, A. M. [367]

October 1932 Term

At Phoenix

MINUTE ENTRY

of Monday, January 16, 1933.

Honorable F. C. Jacobs,
United States District Judge, Presiding.

[Title of Cause.]

Referee's Certificate on Review; Motion of Respondent, Margaret B. Barringer to Strike Referee's Summary of Evidence and for an Order requiring Referee to certify Transcript of Reporter's Notes as part of Record on Review; Motion of Respondent, Phoenix Title and Trust Company, for an Order Requiring Referee to Certify Transcript of Reporter's Notes as part of Record on Review; Exceptions of Respondent, Phoenix Title and Trust Company to Referee's Summary of Evidence, and Exceptions of Respondent, Margaret B. Barringer to Referee's Summary of Evidence, come on regularly for hearing this day.

Messrs. Ellinwood and Ross, by William H. MacKay, Esquire, appear as counsel for Respondent, Margaret B. Barringer, Messrs. Kibbey, Bennett, Gust, Smith and Rosenfeld, by John L. Gust, Esquire, appear as counsel for Respondent, Phoenix Title and Trust Company. Thomas W. Nealon, Esquire, appears as counsel for George E. Lilley, Trustee.

Argument is now had by respective counsel, and

[368]

IT IS ORDERED that said Referee's Certificate on Review; Motion of Respondent, Margaret

B. Barringer to Strike Referee's Summary of Evidence and for an Order Requiring Referee to Certify Transcript of Reporter's Notes as part of Record on Review; Motion of Respondent, Phoenix Title and Trust Company for an Order Requiring Referee to Certify Transcript of Reporter's Notes as part of Record on Review; Exceptions of Respondent, Phoenix Title and Trust Company to Referee's Summary of Evidence; and Exceptions of Respondent, Margaret B. Barringer to Referee's Summary of Evidence, be, and the same are hereby continued to be set for further hearing. [369]

March 1933 Term

At Prescott

MINUTE ENTRY

of Thursday, July 6, 1933

Honorable F. C. Jacobs,
United States District Judge, Presiding.

[Title of Cause.]

IT IS ORDERED that Respondents' Motions to Require Referee to certify the Transcript of the Testimony as a part of the record on review, be set for hearing at Prescott, Arizona, in accordance with the Stipulation of parties on file herein. [370]

March 1933 Term

At Prescott

MINUTE ENTRY

of Tuesday, July 18, 1933.

Honorable F. C. Jacobs,
United States District Judge, Presiding.

[Title of Cause.]

IT IS ORDERED that Respondents' Motions to Require Referee to Certify Transcript of Testimony as part of Record on Review, be set for hearing at Prescott, Arizona, on Thursday, August 10, 1933, at the hour of ten o'clock, A. M. [371]

March 1933 Term

At Prescott

MINUTE ENTRY

of Monday, July 24, 1933.

Honorable F. C. Jacobs,
United States District Judge, Presiding.

[Title of Cause.]

IT IS ORDERED that the Orders heretofore entered herein, setting Respondents' Motions for hearing Thursday, August 10, 1933, be, and the same is hereby vacated, and that said Respondents' Motions be reset for hearing Tuesday, August 1, 1933, at the hour of ten o'clock, A. M., at Prescott, Arizona. [372]

In the United States District Court
For the District of Arizona.

March 1933 Term

At Prescott

MINUTE ENTRY

of Tuesday, August 1, 1933

Honorable F. C. Jacobs

United States District Judge, Presiding.

[Title of Cause.]

Motions of Respondents, Margaret B. Barringer and Phoenix Title and Trust Company, for Order Requiring the Referee to certify Transcript of Reporter's Notes as part of Record on Review, come on regularly for hearing this day.

Messrs. Ellinwood and Ross, by William H. MacKay, Esquire, appear for Respondent, Margaret B. Barringer.

Messrs. Kibbey, Bennett, Gust, Smith and Rosenfeld, by F. O. Smith, Esquire, appear for Respondent, Phoenix Title and Trust Company.

Thomas W. Nealon, Esquire, appears for the Trustee.

Argument is now had by respective counsel, and
IT IS ORDERED that said Motions be submitted, and by the Court taken under advisement. [373]

March 1934 Term

At Prescott

MINUTE ENTRY

of Thursday, August 9, 1934.

Honorable F. C. Jacobs,
United States District Judge, Presiding.

[Title of Cause.]

Referee's Certificate of Review on Petition of Margaret B. Barringer, and Referee's Certificate of Review on Petition of Phoenix Title and Trust Company, come on regularly for hearing this day.

Thomas W. Nealon, Esquire, appears as counsel for George E. Lilley, Trustee.

Messrs. Cunningham, Carson and Gibbons, by G. S. Cunningham, Esquire, appear as counsel for E. L. Grose.

Messrs. Ellinwood and Ross, by William H. MacKay, Esquire, appear as counsel for Margaret B. Barringer.

Messrs. Kibbey, Bennett, Gust, Smith and Rosenfeld, by John L. Gust, Esquire, appear as counsel for Phoenix Title and Trust Company.

Argument is now had by respective counsel, and

IT IS ORDERED that this cause be submitted, and by the Court taken under advisement. [378]

[Title of Court and Cause.]

MINUTE ENTRY

of Thursday, December 13, 1934. [379]

[Order Approving Referee's Order.]

[Set out in full in the STATEMENT OF EVIDENCE at page 412 of this printed transcript.]

[Title of Court and Cause.]

MEMORANDUM.

The order of the Referee is approved and affirmed.

An exception will be noted in behalf of the Respondents Margaret B. Barringer and the Phoenix Title and Trust Company.

Dated this the 13th day of December, 1934, at Phoenix, Arizona.

F. C. JACOBS,

U. S. District Judge.

[Endorsed]: Filed Dec. 14, 1934. [380]

[Title of Court and Cause.]

MINUTE ENTRY

of Monday, December 17, 1934. [381]

[Order Vacating Order Approving Referee's Order.]

[Set out in full in the STATEMENT OF EVIDENCE at page 413 of this printed transcript.]

[Title of Court and Cause.]

MINUTE ENTRY

of Monday, January 7, 1935. [382]

[Order Approving Referee's Order.]

[Set out in full in the STATEMENT OF EVIDENCE at page 414 of this printed transcript.]

[Title of Court and Cause.]

MEMORANDUM.

On the 13th day of December, 1934, this court entered an order approving and affirming the report of the Referee in Bankruptcy, and on motion of the Petitioners Margaret B. Barringer and the Phoenix Title and Trust Company that order was vacated to enable counsel to file a further memorandum of authorities, which was done. After an examination of the authorities and a further consideration of the entire matter, I see no reason to change my ruling;

WHEREFORE. IT IS ORDERED, ADJUDGED AND DECREED that the order of the Referee is approved and affirmed.

An exception will be noted in behalf of the Respondents Margaret B. Barringer and the Phoenix Title and Trust Company.

Dated this the 7th day of January, 1935, at Phoenix, Arizona.

F. C. JACOBS,

U. S. District Judge.

[Endorsed]: Filed Jan 7 1935 [383]

[Title of Court and Cause.]

PETITION FOR APPEAL.

To the Honorable Judge of the United States District Court, in and for the District of Arizona:

Petitioners, the above named MARGARET B. BARRINGER and PHOENIX TITLE AND TRUST COMPANY, a corporation, as Trustee, respectively, considering themselves aggrieved by the order or decree made and entered on the 7th day of January, 1935, in the above entitled proceeding, in that said order or decree denied their respective petitions for review of an order of R. W. Smith, Esq., Referee in Bankruptcy, adjudging Phoenix Title and Trust Company, as Trustee, to have no right, title or interest in or to the property described in said Referee's [384] order, and adjudging and decreeing that appellant Margaret B. Barringer has no lien thereon, as provided in a certain declaration of trust executed by Phoenix Title and Trust Company, as Trustee; and in that said order or decree approved and affirmed the findings and conclusions of said Referee; and in that said order or decree ordered George E. Lilley, as Trustee in Bankruptcy of the Estate of Windsor Square Development, Inc., a corporation, bankrupt, to sell said property, owned by appellant Phoenix Title and Trust Company, as Trustee, and held by it pursuant to a certain declaration of trust to secure the indebtedness of one Thomas J. Tunney to appellant Margaret B. Barringer, free from the provi-

sions of said deed of trust and free from appellant Margaret B. Barringer's lien thereunder; and in that said order or decree adjudged that appellant Margaret B. Barringer is not entitled to have her lien upon said property transferred to the proceeds of such sale, do hereby, jointly and severally appeal from said order or decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in their assignment of errors, which is filed simultaneously herewith; and petitioners pray that this, their appeal, may be allowed, and that a citation may be granted directed to George E. Lilley, as Trustee in Bankruptcy of the Estate of Windsor Square Development, Inc., a corporation, bankrupt; Salt River Valley Water Users' Association, a corporation; Central Arizona Light & Power Company, a corporation; County of Maricopa, a political subdivision of the State of Arizona; State of Arizona: John D. Calhoun, County Treasurer of the County of Maricopa, State of Arizona; Mitt Sims, Treasurer of the State of Arizona; W. R. Wells; Raymond L. Nier; J. Allen Wells, E. L. Grose and Maude M. Grose, his wife; Glen E. Weaver; Lucille Nichols; Nellie B. Wilkinson; Susie M. Wallace, E. R. Foutz; Thomas J. Tunney, and Windsor Square [385] Development, Inc., the bankrupt corporation, commanding them, and each of them, to appear before the United States Circuit Court of Appeals for the Ninth Circuit to do or receive that which may appertain to justice to be done in the

premises, and that a transcript of the record and evidence in said proceeding, upon which said order or decree was made, duly authenticated, may be transmitted to said United States Circuit Court of Appeals for the Ninth Circuit;

Petitioners further state that they desire to supersede the execution of the said order or decree and herewith tender a bond in such amount as the court may require for such purpose, and pray that a supersedeas be allowed as a part of the allowance of said appeal and the amount of the bond fixed so as to operate as a supersedeas.

Dated: February 4, 1935.

MARGARET B. BARRINGER
PHOENIX TITLE AND
TRUST COMPANY,

As Trustee,

By L. J. TAYLOR

Petitioners.

ELLINWOOD & ROSS

By WM. H. MacKAY

Attorneys for Petitioner,

Margaret B. Barringer.

KIBBEY, BENNETT, GUST,
SMITH & ROSENFELD

By J. L. GUST

Attorneys for Petitioner,

Phoenix Title and Trust

Company, as Trustee.

[Endorsed]: Filed Feb. 5, 1935. [386]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Come now MARGARET B. BARRINGER and PHOENIX TITLE AND TRUST COMPANY, a corporation, as Trustee, and file the following assignment of errors upon which they will rely upon their appeal from the order and decree made by this Honorable Court on the 7th day of January, 1935, in the above entitled matter, and said Margaret B. Barringer and Phoenix Title and Trust Company, as Trustee, appellants herein, state that said order is erroneous and against their just rights for the following reasons:

I.

The District Court erred in denying, by its said [387] order or decree of January 7, 1935, the petition of review of the order of R. W. Smith, Esq., Referee in Bankruptcy, made on September 17, 1932, entitled, "Order and Decree Fixing and Marshalling Liens, Determining Priority Thereof and Adjudging Certain Asserted Liens and Interests Null and Void," in the above entitled proceeding.

II.

The District Court erred by its said order or decree of January 7, 1935, in approving and affirming the order of R. W. Smith, Esq., Referee in Bankruptcy, made on September 17, 1932, in the above entitled proceeding.

III.

The District Court erred in its order approving and affirming the Referee's said order in that said Referee erroneously failed to find, as manifestly shown by the reporter's transcript of the evidence before said Referee and certified to said District Court on review, that appellant Phoenix Title and Trust Company, as Trustee, is the lawful owner of the property described in the Referee's said order, and holds the said property as security for the indebtedness of one Thomas J. Tunney to appellant Margaret B. Barringer.

IV.

The District Court erred in its order approving and affirming the Referee's said order in that said Referee erroneously found from the evidence that appellant Margaret B. Barringer in January, 1929, sold said property to Messrs. Owens, Dinmore and Mills, and that they paid to her the agreed consideration therefor, whereas the evidence, as shown by said reporter's transcript, clearly shows that appellant Margaret B. Barringer never sold said property to Messrs. Owens, Dinmore and Mills, and on the contrary conveyed it by duly recorded warranty deed to appellant Phoenix Title and Trust Company, as Trustee, to hold [388] said property for the paramount purpose of securing the said indebtedness of Thomas J. Tunney, who, in a declaration of trust, likewise expressly agreed that the

whole of said property should always be held for the purpose aforesaid.

V.

The District Court erred in approving and affirming the Referee's said order in that the Referee in said order erroneously found and held that the said ownership and title of appellant Phoenix Title and Trust Company, as Trustee, is void as to the Trustee in Bankruptcy and the creditors of the bankrupt for the insufficient reason that a certain declaration of trust, in which it agreed to hold said property and title thereto as security for said indebtedness of Thomas J. Tunney, was not recorded.

VI.

The District Court erred in approving and affirming the Referee's said order in that the Referee in said order erroneously found and held that the agreement of said appellant Phoenix Title and Trust Company, as Trustee, and of said Thomas J. Tunney in said declaration of trust contained to the effect that said property and title thereto shall be held as security for the said indebtedness of Thomas J. Tunney is void as to the Trustee in Bankruptcy and the bankrupt's creditors for the insufficient reason that said declaration of trust was not recorded.

VII.

The District Court erred in approving and affirming the Referee's said order in that the Referee in said order erroneously found and held that the bank-

rupt, as assignee of said Thomas J. Tunney by mesne assignments, succeeded to an interest in and to said property, whereas under the laws of the State of Arizona neither Thomas J. Tunney nor any of his assignees [389] acquired any interest, equitable or otherwise, in said property under the provisions of said declaration of trust.

VIII.

The District Court erred in approving and affirming the Referee's said order in that the Referee in said order further erroneously found and held that any interest in said property claimed by the Trustee in Bankruptcy is free from the agreements of appellant Phoenix Title and Trust Company, as Trustee, and Thomas J. Tunney, the bankrupt's assignor in said declaration of trust contained, to the effect that the entire title, interest and estate in and to said property shall secure the indebtedness of Thomas J. Tunney, for the insufficient reason that said declaration of trust was not recorded.

IX.

The District Court erred in approving and affirming the Referee's said order in that the Referee in said order erroneously found and held that appellant Margaret B. Barringer could not enforce the provisions of said declaration of trust as against Thomas J. Tunney's assignee, the bankrupt, for the insufficient reason that said declaration of trust was not recorded.

X.

The District Court erred in approving and affirming the Referee's said order in that the Referee in said order, contrary to the laws of the State of Arizona, erroneously seeks to prevent appellant Phoenix Title and Trust Company, as Trustee, from performing its duty under said declaration of trust to hold said property as security for said indebtedness of Thomas J. Tunney.

XI.

The District Court erred in approving and affirming the findings of fact of said Referee, because the finding of [390] the Referee to the effect that prior to the filing of the petition of bankruptcy herein and at the time of filing thereof, on October 25, 1930, all of the property described in said Referee's order of September 17, 1932, was in the possession of said bankrupt, is erroneous in that the evidence as set forth in the transcript of evidence, pursuant to the order of said District Court, used at the hearing before the District Court on appellant Margaret B. Barringer's petition for review, shows that said bankrupt was never in possession of said property.

XII.

The District Court erred in approving and affirming the findings of fact of said Referee, because the finding of the Referee to the effect that George E. Lilley, Trustee in Bankruptcy of the above entitled bankrupt estate, immediately, upon qualifying as

such Trustee, took possession of said property, and ever since has had possession thereof, is erroneous in that the evidence manifestly shows that said property is, and ever since December, 1928, has been, in the possession of appellant Phoenix Title and Trust Company, as Trustee, the lawful owner of record thereof.

XIII.

The District Court erred in approving and affirming the findings of fact of said Referee, because the finding of the Referee to the effect that Messrs. Owens, Dinmore and Mills, on the consummation of said transaction, went into possession of said property and improved the same, is erroneous, in that the evidence manifestly shows that said Messrs. Owens, Dinmore and Mills never were in possession of said property, and that said property is and always has been vacant and unimproved, and that any and all improvements installed or paid for by said Messrs. Owens, Dinmore and Mills consisting of trees, paving, curbs, lights, sewers and other street improvements, none [391] of which were ever installed on any of the property described in said Referee's order of September 17, 1932.

XIV.

The District Court erred in approving and affirming the findings of fact of said Referee for the reason that the finding of said Referee to the effect that appellants Margaret B. Barringer and Phoenix Title and Trust Company as Trustee permitted the

bankrupt to exercise dominion over, retain possession of and hold itself out to the public in general and numerous creditors in particular as the owner of the property described in said Referee's order of September 17, 1932, and that in reliance thereon, credit was extended to the bankrupt by creditors of said bankrupt, is erroneous in that said finding was without support in the evidence before the Referee and is contrary to the evidence.

XV.

The District Court erred in approving and affirming the findings of fact of said Referee for the reason that the finding of said Referee to the effect that appellants Margaret B. Barringer and Phoenix Title and Trust Company as Trustee permitted the bankrupt's predecessors to exercise dominion over, retain possession of and hold themselves out to the public in general and numerous creditors in particular as the owners of the property described in said Referee's order of September 17, 1932, and that in reliance thereon, credit was extended to the bankrupt's predecessors by creditors of said bankrupt, is erroneous in that said finding was without support in the evidence before the Referee and is contrary to the evidence.

XVI.

The District Court erred in approving and affirming the Referee's order of September 17, 1932, in that said Referee, [392] by his said order, held and

found that said declaration of trust was invalid because it was not recorded, whereas under the laws of the State of Arizona the provisions of said declaration of trust, though unrecorded, are valid and binding as to said Trustee of said bankrupt and the said bankrupt's creditors.

XVII.

The District Court erred in approving and affirming said Referee's order of September 17, 1932, in that it conclusively appears from the evidence that the transfer by Messrs. Owens, Dinmore and Mills of their rights under said declaration of trust to the bankrupt and the assumption by the bankrupt of their indebtedness were and are, respectively, fraudulent, fictitious and void under the laws of the State of Arizona, and that said order of the Referee and the entire proceedings before the Referee in said bankruptcy estate are fraudulent and void.

XVIII.

The District Court erred in approving and affirming the Referee's said order in that, over appellants' objections, said Referee permitted witnesses E. L. Grose, Forest Whitney and Henry F. Lieber, respectively, to testify that they believed the property in question to be owned by said Messrs. Owens, Dinmore and Mills, in that the evidence shows no valid grounds existed for their respective beliefs.

XIX.

The District Court erred in approving and affirming the Referee's said order in that said Referee denied to appellant Margaret B. Barringer the right to cross-examine witnesses W. R. Wells and Henry F. Leiber concerning their beliefs as to the ownership of said property and outstanding liens thereon, the testimony of said witnesses concerning said matters having been, as shown by said Referee's summary and said reporter's [393] transcript, certified to said District Court on review.

Wherefore, your petitioners pray that the court allow an appeal herein from the order or decree of January 7, 1935, and fix the amount and approve a bond for cost and supersedeas on said appeal.

ELLINWOOD & ROSS

By WM. H. MACKAY

Attorneys for Petitioner
Margaret B. Barringer.

KIBBEY, BENNETT, GUST,
SMITH & ROSENFELD

By J. L. GUST

Attorneys for Petitioner
Phoenix Title and Trust
Company, as Trustee.

[Endorsed]: Filed Feb. 5, 1935. [394]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL WITH
SUPERSEDEAS

The Petition of MARGARET B. BARRINGER and PHOENIX TITLE AND TRUST COMPANY, a corporation, as Trustee, appellants in the above entitled proceeding, for an appeal from the order or decree of the District Court of the United States, in and for the District of Arizona, made on January 7, 1935, is hereby granted and the appeal is allowed; and upon petitioners filing a bond in the sum of \$5,000 with sufficient surety and conditioned as required by law, the same shall operate as a supersedeas of the said order or decree made and entered in the above entitled proceeding and shall suspend and stay all further proceedings in this court until the termination of said appeal by the United [395] States Circuit Court of Appeals for the Ninth Circuit.

Dated: February 5th, 1935.

F. C. JACOBS

District Judge.

[Endorsed]: Filed Feb 5 1935. [396]

[Title of Court and Cause.]

BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, MARGARET B. BARRINGER and PHOENIX TITLE AND TRUST COMPANY, a

corporation, as principal, and HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation of the State of Connecticut, as surety, are held and firmly bound unto GEORGE E. LILLEY, as Trustee in Bankruptcy of the Estate of Windsor Square Development, Inc., a corporation, bankrupt; SALT RIVER VALLEY WATER USERS' ASSOCIATION, a corporation; CENTRAL ARIZONA LIGHT & POWER COMPANY, a corporation; COUNTY OF MARICOPA, a political subdivision of the State of Arizona; STATE OF ARIZONA; JOHN D. CALHOUN, County Treasurer of the County of Maricopa, [397] State of Arizona; MITT SIMS, Treasurer of the State of Arizona; W. R. WELLS; RAYMOND L. NIER; J. ALLEN WELLS; E. L. GROSE and MAUDE M. GROSE, his wife; GLEN E. WEAVER; LUCILLE NICHOLS; NELLIE B. WILKINSON; SUSIE M. WALLACE; E. R. FOUTZ; THOMAS J. TUNNEY, and WINDSOR SQUARE DEVELOPMENT, INC., the bankrupt corporation, in the full sum of five thousand dollars (\$5,000), for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated this 4th day of February, 1935.

Whereas an order was entered in the above entitled proceeding in the District Court of the United States, in and for the District of Arizona, on the 5th day of February, 1935, allowing an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from a certain order or decree made and entered by said District Court of the

United States, in and for the District of Arizona, on the 7th day of January, 1935, approving and affirming that certain order of R. W. SMITH, Esq., Referee in Bankruptcy, fixing and marshalling liens, etc., made on September 17, 1932; and

Whereas in said order allowing said appeal it was ordered, adjudged and decreed that said appeal shall operate as a supersedeas on execution by said Margaret B. Barringer and Phoenix Title and Trust Company of a bond in the sum of \$5,000, conditioned as required by law;

Now, Therefore, the condition of the above obligation is such that if the said Margaret B. Barringer and Phoenix Title and Trust Company shall prosecute said appeal to effect, and answer all damages and costs if they fail to make good their pleas, then the above obligation to be void, else to [398] remain in full force and virtue.

IN WITNESS WHEREOF, the undersigned have executed this bond this 4th day of February, 1935.

MARGARET B. BARRINGER

[Seal] PHOENIX TITLE AND TRUST
COMPANY,

By GEO. W. MICKLE

Its President

Attest:

L. J. TAYLOR

Its Secretary

[Seal] HARTFORD ACCIDENT AND IN-
DEMNITY COMPANY

By V. M. HALDIMAN

Its Attorney in Fact.

I hereby approve the foregoing bond.

Dated this 5th day of February, 1935.

F. C. JACOBS

Judge. [399]

State of Arizona,
County of Maricopa—ss.

On this 4th day of February, 1935, before me, LUCILLE HILL, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared MARGARET B. BARRINGER, known to me to be one of the persons who subscribed her name to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the county and state aforesaid the day and year in this certificate first above written.

[Seal] LUCILLE HILL

Notary Public in and for Maricopa County, State of Arizona.

My commission expires: 3/17/37. [400]

State of Arizona,
County of Maricopa—ss:

On this 4th day of February, 1935, before me, ALBERT L. CLARK, a Notary Public in and for said County and State, residing therein, duly com-

missioned and sworn, personally appeared GEO. W. MICKLE and L. J. TAYLOR, known to me to be the.....President and Secretary, respectively, of Phoenix Title and Trust Company, a corporation, and acknowledged to me that they executed the foregoing instrument for and on behalf of said corporation as such.....President and Secretary, respectively for the purpose and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the county and state aforesaid the day and year in this certificate first above written.

[Seal] ALBERT L. CLARK
Notary Public in and for Maricopa County, State
of Arizona.

My commission expires: May 23, 1937. [401]

State of Arizona,
County of Maricopa—ss.

On this 4th day of February, 1935, before me, RUTH RIGGS, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared V. M. HALDIMAN, known to me to be the duly authorized Attorney in Fact of HARTFORD ACCIDENT AND INDEMNITY COMPANY, and the same person whose name is subscribed to the within instrument as the Attorney in Fact of said company, and that the said V. M. HALDIMAN duly acknowledged to me that he subscribed the name of HART-

FORD ACCIDENT AND INDEMNITY COMPANY thereto as surety, and his own name as Attorney in Fact, and that he executed the foregoing instrument as such Attorney in Fact for the said HARTFORD ACCIDENT AND INDEMNITY COMPANY for the purpose and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the county and state aforesaid, the day and year in this certificate first above written.

[Seal] RUTH RIGGS

Notary Public in and for Maricopa County, State of Arizona.

My commission expires: June 9, 1938.

[Endorsed]: Filed Feb 5 1935. [402]

October 1934 Term

At Phoenix

MINUTE ENTRY

of Tuesday, February 5, 1935

Honorable F. C. Jacobs,

United States District Judge, Presiding

[Title of Cause.]

Come now the appellants, Margaret B. Barringer and Phoenix Title and Trust Company, a corporation, as Trustee, by their counsel, Messrs. Ellinwood and Ross, by William H. MacKay, Esquire, and present to the Court their bond on appeal, executed on the 4th day of February, 1935, in the sum

of Five Thousand Dollars (\$5,000.00), with Hartford Accident and Indemnity Company, a corporation, as surety thereon, and

IT IS ORDERED that said bond be and the same is hereby accepted and approved. [403]

October 1934 Term

At Phoenix

MINUTE ENTRY

Of Thursday, February 14, 1935

Honorable Paul J. McCormick, United States District Judge for the Southern District of California, Specially Assigned, Presiding.

[Title of Cause.]

Upon motion of William H. MacKay, Esquire, of counsel for Respondent, Margaret B. Barringer, and upon his representation that Thomas W. Nealon, Esquire, counsel for Trustee, consents,

IT IS ORDERED that said William H. MacKay, Esquire, be allowed to withdraw the file in this cause, and keep the same under his personal supervision and surveillance at all times. [404]

[Title of Court and Cause.]

ORDER EXTENDING OCTOBER, 1934, TERM OF DISTRICT COURT.

IT IS HEREBY ORDERED that the October, 1934, term of the United States District Court for

the District of Arizona be, and the same is, hereby extended to and including the 1st day of May, 1935, for the purpose of preparing, filing, settling, approving and certifying a statement of the evidence in narrative form and for the purpose of making and disposing of any and all motions and of issuance of any citation or process and of taking any action which must or may be taken within the said October, 1934, term of said court at which judgment in the above entitled action was entered.

DONE in open court this 26th day of February, 1935.

F. C. JACOBS,

United States District Judge.

[Endorsed]: Filed Feb 26 1935. [405]

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR PREPARATION AND FILING OF RECORD ON APPEAL AND EXTENDING TIME FOR PRESENTATION AND APPROVAL OF CONDENSED STATEMENT OF EVIDENCE AND TESTIMONY OF WITNESSES IN NARRATIVE FORM.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title and Trust Company may prepare draft of statement of evidence in narrative form and file the

same and obtain settlement, approval and certification thereof be, and the same is, hereby extended to and including the 1st day of April, 1935.

DONE in open court this 26th day of February, 1935.

F. C. JACOBS

United States District Judge

[Endorsed]: Filed Feb. 26, 1935. [406]

[Title of Court and Cause.]

ORDER ENLARGING TIME TO FILE RECORD AND DOCKET CASE ON APPEAL.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title and Trust Company may file the record and docket their case in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is, hereby enlarged and extended to and including the 6th day of April, 1935.

DONE in open court this 26th day of February, 1935.

F. C. JACOBS

United States District Judge

[Endorsed]: Filed Feb. 27, 1935. [407]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the United States District Court
in and for the State of Arizona:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above entitled cause and to include in such transcript of record the following, and no other, papers and exhibits, to-wit:

(1) Trustee's Petition to Marshall Liens and Sell Property Free and Clear of Encumbrances, Signed by George E. Lilley, Trustee in Bankruptcy, Filed With the Referee June [408] 6th, 1931, filed with the Clerk November 18th, 1932.

(2) Order to Show Cause on Trustee's Petition to Marshall Liens and Sell Free and Clear of Encumbrances, dated June 18th, 1931, signed by R. W. Smith, Referee in Bankruptcy, together with Marshal's Return of Service on Margaret B. Barringer and Phoenix Title and Trust Company.

(3) Amended Answer of Phoenix Title and Trust Company to Order to Show Cause of Trustee's Petition to Marshall Liens and Sell Free and Clear of Encumbrances, filed with the Referee October 19th, 1931.

(4) Motion to Strike Out Redundant and Impertinent Matter From Amended Answer of Phoenix Title and Trust Company to Order to Show Cause on Trustee's Petition to Marshall Liens and

Sell, filed with the Referee November 23rd, 1931.

(5) Appearance of E. L. Grose in Conformity With Order of Trustee in Bankruptcy, filed with Referee in Bankruptcy, September 2nd, 1931.

(6) Answer of Lien-Holder Margaret B. Barringer to Trustee's Petition to Marshall Liens and Sell, and Petition in Intervention, including all exhibits thereunto annexed, filed with the Referee September 2nd, 1931.

(7) Motion to Strike Out Redundant and Impertinent Matter From the Answer of Margaret B. Barringer to the Order to Show Cause on Trustee's Petition to Marshall Liens and Sell, filed with the Referee November 23rd, 1931.

(8) Order and Decree Fixing and Marshalling Liens, Determining Priority Thereof and Adjudging Certain Assert- [409] ed Liens and Interests Null and Void, together with acknowledgments of service thereon, signed by R. W. Smith, Referee in Bankruptcy, and filed with the Referee September 17th, 1932, respectively.

(9) Exceptions of Respondent Margaret B. Barringer to Referee's Order and Decree Fixing and Marshalling Liens, Determining Priority Thereof and Adjudging Certain Asserted Liens and Interests Null and Void, filed with the Referee September 29th, 1932.

(10) Exceptions of Phoenix Title and Trust Company to Order and Decree Fixing and Marshalling Liens, Determining Priority Thereof and Adjudging Certain Asserted Liens and Interests Null

and Void, Made and Entered by R. W. Smith, Referee, on September 17th, 1932, filed with the Referee September 29th, 1932.

(11) Petition of Margaret B. Barringer to Review Order and Decree Fixing and Marshalling Liens, Determining Priority Thereof and Adjudging Certain Asserted Liens and Interests Null and Void, Made and Entered by R. W. Smith, Referee, on September 17th, 1932, together with acknowledgments of service thereon, filed with the Referee September 29th, 1932.

(12) Petition of Phoenix Title and Trust Company to Review Order and Decree Fixing and Marshalling Liens, Determining Priority Thereof and Adjudging Certain Asserted Liens and Interests Null and Void, Made and Entered by R. W. Smith, Referee, on September 17th, 1932, together with acknowledgments of service thereon, filed with the Referee September 29th, 1932. [410]

(13) Certificate of Review on Petition of Margaret B. Barringer, signed by the Referee and filed with the Clerk November 18th, 1932, respectively.

(14) Certificate of Review on Petition of Phoenix Title and Trust Company, signed by the Referee and filed with the Clerk November 18th, 1932, respectively.

(15) Letter dated November 18th, 1932, addressed by R. W. Smith, Referee in Bankruptcy, to Honorable F. C. Jacobs, being letter of transmittal with Petitions for Review and Certificates of Review.

(16) Summary of the Evidence, signed by R. W. Smith, Referee, filed with the Certificate of Review on Petition of Margaret B. Barringer.

(17) Exceptions of Respondent Margaret B. Barringer to Referee's Summary of Evidence, filed with the Clerk December 8th, 1932.

(18) Exceptions of Respondent Phoenix Title and Trust Company to Summary of Evidence Certified by R. W. Smith, Esq., Referee in Bankruptcy, filed with the Clerk December 8th, 1932.

(19) Motion of Respondent Margaret B. Barringer to Strike Referee's Summary of Evidence and for Order Requiring Referee to Certify Transcript of Reporter's Notes as Part of Record on Review, filed with the Clerk December 6th, 1932.

(20) Motion of Phoenix Title and Trust Company for Order Requiring Referee to Certify Transcript of Reporter's Notes as Part of Record on Review, filed with the Clerk December 8th, 1932.

[411]

(21) Minute Order made and entered by the District Court August 1st, 1933.

(22) Minute Order made and entered by the District Court September 25th, 1933.

(23) Certificate of Referee Making Reporter's Transcript Part of Record on Review in Matter of Windsor Square Development, Inc., Bankrupt, filed with the Clerk September 28th, 1933.

(24) Minute Order made and entered by the District Court August 9th, 1934.

(25) Minute Order made and entered by the District Court December 13th, 1934.

(26) District Court's memo on Ruling on Referee's Order, filed with the Clerk December 14th, 1934.

(27) Minute Order made and entered by the District Court December 17th, 1934.

(28) Minute Order made and entered by the District Court January 7th, 1935.

(29) District Court's memo on Ruling on Referee's Order, filed with the Clerk January 7th, 1935.

(30) All memorandum opinions of the District Court in the above entitled cause.

(31) Petition for Appeal, dated February 4th, 1935, of Margaret B. Barringer and Phoenix Title and Trust Company, as Trustee, filed with the Clerk February 5th, 1935. [412]

(32) Assignment of Errors, filed by Margaret B. Barringer and Phoenix Title and Trust Company, as Trustee, February 5th, 1935.

(33) Order Allowing Appeal With Supersedeas, signed by F. C. Jacobs, District Judge, dated February 5th, 1935, filed with the Clerk February 5th, 1935.

(34) Bond on Appeal, dated February 4th, 1935, with approval of F. C. Jacobs, Judge, thereon, filed with the Clerk February 5th, 1935.

(35) Citation, dated February 5th, 1935, together with acknowledgments of service and Mar-

shal's Return thereon, filed with the Clerk February 26th, 1935.

(36) Order Extending October, 1934, term of District Court, signed by the District Judge February 26th, 1935, filed with the Clerk February 26th, 1935.

(37) Order Extending Time for Preparation and Filing of Record on Appeal and Extending Time for Presentation and Approval of Condensed Statement of Evidence and Testimony of Witnesses in Narrative Form, signed by the District Judge February 26th, 1935, filed with the Clerk February 26th, 1935.

(38) Condensed Statement of Evidence in Narrative Form, together with order approving, settling and allowing the same.

(39) This praecipe, together with acknowledgments of service thereon.

ELLINWOOD & ROSS

WM. H. McKAY

Attorneys for Margaret B. Barringer

KIBBEY, BENNETT, GUST, SMITH

& ROSENFELD

J. L. GUST

Attorneys for Phoenix Title and Trust
Company, as Trustee. [413]

Service of the within Praecept for Transcript of Record acknowledged this 6th day of March, 1935.

GEORGE E. LILLEY

As Trustee in Bankruptcy of the Estate of Windsor Square Development, Inc., a corporation, Bankrupt,

By THOMAS W. NEALON

ALICE M. BIRDSALL

His Attorneys

CENTRAL ARIZONA LIGHT & POWER COMPANY, a corporation

By ARMSTRONG, KRAMER, MORRISON & ROCHE

Its Attorneys

COUNTY OF MARICOPA

By HARRY JOHNSON

E. G. Frazier, Dep.

County Attorney

STATE OF ARIZONA

By JOHN L. SULLIVAN

Attorney General

W. R. WELLS

By HAYS, STANFORD, WALTON,

ALLEE & WILLIAMS

His Attorneys

E. L. GROSE and MAUDE M. GROSE

By CUNNINGHAM, CARSON & GIBBONS

Their Attorneys

WINDSOR SQUARE DEVELOPMENT, INC., the bankrupt corporation

By FLANIGAN & FIELDS

Its Attorneys

SALT RIVER VALLEY WATER USERS' ASSOCIATION

By S. C. HENSHAW

Its Secretary

[Title of Court and Cause.]

ORDER EXTENDING TIME TO FILE COUNTER-PRAECIPE FOR TRANSCRIPT OF RECORD.

APPLICATION having been made to this Court for additional time for filing counter-praecipe for transcript of record by George E. Lilley, as Trustee in Bankruptcy of the Estate of Windsor Square Development, Inc., a corporation, Bankrupt, and good cause appearing therefor,

IT IS HEREBY ORDERED that said George E. Lilley, Trustee in Bankruptcy as aforesaid, shall have an additional ten days from the date hereof for the filing of the counter-praecipe for transcript of record.

Dated this 14th day of March, 1935.

F. C. JACOBS,

Judge of United States District Court.

[Endorsed]: Filed Mar. 14, 1935. [415]

[Title of Court and Cause.]

PRAECIPE OF APPELLEE FOR ADDITIONAL PORTIONS OF RECORD.

To the Clerk of the United States District Court in and for the District of Arizona:

You are hereby requested to incorporate in the transcript of record on appeal in the above entitled matter, in addition to those portions of the record set forth and designated in the Praecipe of Appellant served and filed herein, the following portions of the record desired by appellee, to-wit: [416]

(a) Notice of Creditors' Meeting of June 18, 1931.

(b) Petition for Service upon Non-resident Lien-holders and Claimants.

(c) Order for Service on Non-residents in Marshalling of Liens and Sale Free and Clear of Encumbrances.

(d) Return of Service of Order to Show Cause on Petition to Sell Free and Clear of Encumbrances.

(e) Proof of Publication of Order to Show Cause.

(f) Order dated June 18, 1931, Authorizing Sale Free and Clear of Encumbrances and Directing all Liens Held by any Lien-holders upon said premises to be transferred to the Proceeds of said Sale.

(g) Answer of County of Maricopa and John D. Calhoun, Treasurer thereof.

(h) Answer of W. R. Wells.

(i) Answer of Raymond L. Nier.

(j) Answer of J. Allen Wells.

(k) Answer of Salt River Valley Water Users' Association.

(l) Motion for Further and Better Particulars of [417] Amended Answer of Phoenix Title & Trust Company.

(m) Defaults of Glen E. Weaver, E. R. Foutz, Lucille Nichols, Nellie B. Wilkinson, Susie M. Wallace and Thomas J. Tunney.

(n) Record of Proceedings before Referee transmitted by Referee with Certificate of Review.

(o) Order of December 17, 1934, vacating order of December 13, 1934, to allow Petitioners to file Further Authorities.

(p) Exceptions of W. R. Wells to Order and Decree Fixing and Marshalling Liens, et cetera.

(q) All Minute Entries in Office of Clerk of District Court in this Proceeding.

(r) This Praeceptum.

THOMAS W. NEALON,
ALICE M. BIRDSALL,
Attorneys for Appellee. [418]

Received copy this 21st day of March, 1935.

ELLINWOOD & ROSS,
Attorneys for Margaret B. Barringer.
KIBBEY, BENNETT, GUST, SMITH &
ROSENFELD,
Attorneys for Phoenix Title & Trust Co.

[Endorsed]: Filed Mar. 21, 1935. [419]

[Title of Court and Cause.]

ORDER EXTENDING OCTOBER, 1934, TERM
OF DISTRICT COURT.

IT IS HEREBY ORDERED that the October, 1934, Term of the United States District Court for the District of Arizona be, and the same is, hereby extended to and including the 1st day of June, 1935, for the purpose of preparing, filing, settling, approving and certifying a statement of the evidence

in narrative form and for the purpose of making and disposing of any and all motions and of issuance of any citation or process and of taking any action which must or may be taken within the said October, 1934, term of said court at which judgment in the above entitled action was entered.

Done in open court this 22nd day of March, 1935.

F. C. JACOBS,

United States District Judge.

[Endorsed]: Filed Mar. 22, 1935. [420]

[Title of Court and Cause.]

ORDER ENLARGING TIME TO FILE RECORD AND DOCKET CASE ON APPEAL.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title and Trust Company may file the record and docket their case in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is, hereby enlarged and extended to and including the 1st day of June, 1935.

Done in open court this 22nd day of March, 1935.

F. C. JACOBS,

United States District Judge.

[Endorsed]: Filed Mar. 22, 1935. [421]

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR PREPARATION AND FILING OF RECORD ON APPEAL AND EXTENDING TIME FOR PRESENTATION AND APPROVAL OF CONDENSED STATEMENT OF EVIDENCE AND TESTIMONY OF WITNESSES IN NARRATIVE FORM.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title and Trust Company may prepare draft of statement of evidence in narrative form and file the same and obtain settlement, approval and certification thereof be, and the same is, hereby extended to and including the 1st day of June, 1935.

Done in open court this 22nd day of March, 1935.

F. C. JACOBS,

United States District Judge.

[Endorsed]: Filed Mar. 22, 1935. [422]

[Title of Court and Cause.]

ORDER EXTENDING OCTOBER, 1934, TERM OF DISTRICT COURT.

IT IS HEREBY ORDERED that the October, 1934, term of the United States District Court for the District of Arizona be, and the same is hereby, extended to and including the 1st day of July, 1935, for the purpose of preparing, filing, settling, ap-

proving and certifying a statement of the evidence in narrative form and for the purpose of making and disposing of any and all motions and of issuance of any citation or process and of taking any action which must or may be taken within the said October, 1934, term of said court at which judgment in the above-entitled action was entered.

Done in open court this 24th day of May, 1935.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed May 24, 1935. [423]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO FILE RECORD AND DOCKET CASE ON APPEAL.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title and Trust Company may file the record and docket their case in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, enlarged and extended to and including the 1st day of July, 1935.

Done in open court this 24th day of May, 1935.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed May 24, 1935. [424]

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR PREPARATION AND FILING OF RECORD ON APPEAL AND EXTENDING TIME FOR PRESENTATION AND APPROVAL OF CONDENSED STATEMENT OF EVIDENCE AND TESTIMONY OF WITNESSES IN NARRATIVE FORM.

It is hereby ordered that the time within which Margaret B. Barringer and Phoenix Title and Trust Company may prepare draft of statement of evidence in narrative form and file the same and obtain settlement, approval and certification thereof be, and the same is hereby, extended to and including the 1st day of July, 1935.

Done in open court this 24th day of May, 1935.

F. C. JACOBS,

United States District Judge.

[Endorsed]: Filed May 24, 1935. [425]

[Title of Court and Cause.]

ORDER EXTENDING OCTOBER, 1934, TERM OF DISTRICT COURT.

IT IS HEREBY ORDERED that the October, 1934, term of the United States District Court for the District of Arizona be, and the same is, hereby extended to and including the 1st day of September, 1935, for the purpose of preparing, filing, settling,

approving and certifying a statement of the evidence in narrative form and for the purpose of making and disposing of any and all motions and of issuance of any citation or process and of taking any action which must or may be taken within the said October, 1934, term of said court at which judgment in the above entitled action was entered.

Done in open court this 7th day of June, 1935.

F. C. JACOBS,

United States District Judge.

[Endorsed]: Filed Jun. 7, 1935. [426]

[Title of Court and Cause.]

**ORDER ENLARGING TIME TO FILE RECORD
AND DOCKET CASE ON APPEAL.**

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title and Trust Company may file the record and docket their case in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is, hereby enlarged and extended to and including the 1st day of September, 1935.

Done in open court this 7th day of June, 1935.

F. C. JACOBS,

United States District Judge.

[Endorsed]: Filed Jun. 7, 1935. [427]

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR PREPARATION AND FILING OF RECORD ON APPEAL AND EXTENDING TIME FOR PRESENTATION AND APPROVAL OF CONDENSED STATEMENT OF EVIDENCE AND TESTIMONY OF WITNESSES IN NARRATIVE FORM.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title & Trust Company may prepare draft of statement of evidence in narrative form and file the same and obtain settlement, approval and certification thereof be, and the same is, hereby extended to and including the 1st day of September, 1935.

Done in open court this 7th day of June, 1935.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed Jun. 7, 1935. [428]

[Title of Court and Cause.]

ORDER EXTENDING OCTOBER, 1934, TERM OF DISTRICT COURT.

IT IS HEREBY ORDERED that the October, 1934, term of the United States District Court for the District of Arizona be, and the same is, hereby extended to and including the 1st day of November, 1935, for the purpose of preparing, filing, settling,

approving and certifying a statement of the evidence in narrative form and for the purpose of making and disposing of any and all motions and of issuance of any citation or process and of taking any action which must or may be taken within the said October, 1934, term of said court at which judgment in the above-entitled action was entered.

Done in open court this 15th day of July, 1935.

F. C. JACOBS,

United States District Judge.

[Endorsed]: Filed Jul. 15, 1935. [429]

[Title of Court and Cause.]

ORDER ENLARGING TIME TO FILE RECORD AND DOCKET CASE ON APPEAL.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title and Trust Company may file the record and docket their case in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, enlarged and extended to and including the 1st day of November, 1935.

Done in open court this 15th day of July, 1935.

F. C. JACOBS,

United States District Judge.

[Endorsed]: Filed Jul. 15, 1935. [430]

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR PREPARATION AND FILING OF RECORD ON APPEAL AND EXTENDING TIME FOR PRESENTATION AND APPROVAL OF CONDENSED STATEMENT OF EVIDENCE AND TESTIMONY OF WITNESSES IN NARRATIVE FORM.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title & Trust Company may prepare draft of statement of evidence in narrative form and file the same and obtain settlement, approval and certification thereof, be, and the same is hereby, extended to and including the 1st day of November, 1935.

Done in open court this 15th day of July, 1935.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed Jul. 15, 1935. [431]

[Title of Court and Cause.]

ORDER EXTENDING OCTOBER, 1934, TERM OF DISTRICT COURT.

IT IS HEREBY ORDERED that the October, 1934, term of the United States District Court for the District of Arizona be, and the same is hereby, extended to and including the 2nd day of January,

1936, for the purpose of preparing, filing, settling, approving and certifying a statement of the evidence in narrative form and for the purpose of making and disposing of any and all motions and of issuance of any citation or process and of taking any action which must or may be taken within the said October, 1934, term of said court at which judgment in the above entitled action was entered.

Done in open court this 23rd day of October, 1935.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed Oct. 23, 1935. [432]

[Title of Court and Cause.]

ORDER ENLARGING TIME TO FILE RECORD
AND DOCKET CASE ON APPEAL.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title and Trust Company may file the record and docket their case in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, enlarged and extended to an including the 2nd day of January, 1936.

Done in open court this 23rd day of October, 1935.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed Oct. 23, 1935. [433]

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR PREPARATION AND FILING OF RECORD ON APPEAL AND EXTENDING TIME FOR PRESENTATION AND APPROVAL OF CONDENSED STATEMENT OF EVIDENCE AND TESTIMONY OF WITNESSES IN NARRATIVE FORM.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title & Trust Company may prepare draft of statement of evidence in narrative form and file the same and obtain settlement, approval and certification thereof be, and the same is, hereby extended to and including the 2nd day of January, 1936.

Done in open court this 23rd day of October, 1935.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed Oct. 23, 1935. [434]

[Title of Court and Cause.]

ORDER EXTENDING OCTOBER, 1934,
TERM OF DISTRICT COURT.

IT IS HEREBY ORDERED that the October, 1934, term of the United States District Court for the District of Arizona be, and the same is hereby,

extended to and including the 1st day of February, 1936, for the purpose of preparing, filing, settling, approving and certifying a statement of the evidence in narrative form and for the purpose of making and disposing of any and all motions and of issuance of any citation or process and of taking any action which must or may be taken within the said October, 1934, term of said court at which judgment in the above entitled action was entered.

Done in open court this 23rd day of December, 1935.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed Dec. 23, 1935. [435]

[Title of Court and Cause.]

ORDER ENLARGING TIME TO FILE RECORD
AND DOCKET CASE ON APPEAL.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title & Trust Company may file the record and docket their case in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, enlarged and extended to and including the 1st day of February, 1936.

Done in open court this 23rd day of December, 1935.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed Dec. 23, 1935. [436]

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR PREPARATION AND FILING OF RECORD ON APPEAL AND EXTENDING TIME FOR PRESENTATION AND APPROVAL OF CONDENSED STATEMENT OF EVIDENCE AND TESTIMONY OF WITNESSES IN NARRATIVE FORM.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title & Trust Company may prepare draft of statement of evidence in narrative form and file the same and obtain settlement, approval and certification thereof be, and the same is, hereby extended to and including the 1st day of February, 1936.

Done in open court this 23rd day of December, 1935.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed Dec. 23, 1935. [437]

[Title of Court and Cause.]

ORDER EXTENDING OCTOBER, 1934, TERM OF DISTRICT COURT.

IT IS HEREBY ORDERED that the October, 1934, term of the United States District Court for the District of Arizona be, and the same is hereby, extended to and including the 1st day of May,

1936, for the purpose of preparing, filing, settling, approving and certifying a statement of the evidence in narrative form and for the purpose of making and disposing of any and all motions and of issuance of any citation or process and of taking any action which must or may be taken within the said October, 1934, term of said court at which judgment in the above-entitled action was entered.

Done in open court this 24th day of February, 1936.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed Feb. 24, 1936. [438]

[Title of Court and Cause.]

ORDER ENLARGING TIME TO FILE RECORD
AND DOCKET CASE ON APPEAL.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title and Trust Company may file the record and docket their case in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, enlarged and extended to and including the 1st day of May, 1936.

Done in open court this 24th day of February, 1936.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed Feb. 24, 1936. [439]

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR PREPARATION AND FILING OF RECORD ON APPEAL AND EXTENDING TIME FOR PRESENTATION AND APPROVAL OF CONDENSED STATEMENT OF EVIDENCE AND TESTIMONY OF WITNESSES IN NARRATIVE FORM.

IT IS HEREBY ORDERED that the time within which Margaret B. Barringer and Phoenix Title & Trust Company may prepare draft of statement of evidence in narrative form and file the same and obtain settlement, approval and certification thereof be, and the same is hereby, extended to and including the 1st day of May, 1936.

Done in open court this 24th day of February, 1936.

F. C. JACOBS,
United States District Judge.

[Endorsed]: Filed Feb. 24, 1936. [440]

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR PRESENTATION, APPROVAL, CERTIFICATION AND FILING OF STATEMENT OF EVIDENCE AND EXTENDING OCTOBER 1934 TERM AND TIME IN WHICH TO FILE RECORD AND DOCKET CASE ON APPEAL.

On reading the stipulation entered into by and between Margaret B. Barringer and Phoenix Title and Trust Company and George E. Lilley, Trustee in Bankruptcy of the Estate of Windsor Square Development, Inc., filed herein on April 11th, 1936, it appearing that said parties have agreed that said Margaret B. Barringer and said Phoenix Title and Trust Company may present the Statement of Evidence and obtain settlement and approval thereof and file the same and file the record and docket their case in the United States Circuit Court of Appeals for the Ninth Circuit, respectively, at any time until and including August 1st, 1936, and that the October, 1934, term of said court may be extended until said date, and that an order or orders in accord with said stipulation may forthwith be entered, and further good cause being shown,

IT IS ORDERED that the time within which Margaret B. Barringer and Phoenix Title & Trust Company may present the Statement of Evidence and obtain settlement and approval thereof and file the same and file the record and docket their case on appeal in the United States Circuit Court

of Appeals for the Ninth Circuit and the October, 1934, Term of the above entitled Court shall be, and the same are hereby, respectively, extended [441] to and including the 1st day of August, 1936.

Done in open Court this 13th day of April, 1936.

F. C. JACOBS.

United States District Judge.

[Endorsed]: Filed Apr. 13, 1936. [442]

April 1936 Term

At Phoenix

MINUTE ENTRY

of Monday, May 18, 1936

Honorable F. C. JACOBS, United States District Judge, Presiding.

[Title of Cause.]

This being the time heretofore fixed for approval of Statement of Evidence, this case is now regularly called.

Messrs. Ellinwood and Ross, by William H. MacKay, Esquire, appear as counsel for Respondents, Margaret B. Barringer and Phoenix Title and Trust Company.

Thomas W. Nealon, Esquire, appears as counsel for Trustee, George W. Lilley.

Upon motion of said counsel for Trustee,

IT IS ORDERED that this cause be continued and reset for approval of Statement of Evidence, on Monday, May 25, 1936, at the hour of ten o'clock

A. M., and that Trustee's time within which to file Objections to Proposed Statement of Evidence, be extended to and including Monday, May 25, 1936.

[443]

[Title of Court and Cause.]

STATEMENT OF THE EVIDENCE REQUIRED
BY EQUITY RULE 75, CONSISTING OF
TWO PARTS.

PART I: Papers certified by Referee to District Judge on review other than exhibits and transcript of the testimony.

PART II: Proceedings before the District Court on review, including condensed statement in narrative form of the evidence certified by the Referee on review to the District Judge. [444]

[Court and Cause.]

CERTIFICATE OF REVIEW ON PETITION
OF MARGARET B. BARRINGER

To the Honorable F. C. Jacobs, Judge of the District Court of the United States for the District of Arizona:

I, R. W. SMITH, one of the Referees of said Court in Bankruptcy, do hereby certify that in the course of the proceedings in said cause before me, the following question arose pertinent to said proceeding:

Was the order of the Referee fixing and marshaling liens, determining priority thereof and

adjudging certain asserted liens and interests null and void, erroneous as contrary to law and not justified by the evidence in the following particulars:

- (a) In directing the sale of the property described in said order free and clear of all encumbrances, except as therein specifically set forth, at private sale and in compliance with the order of sale made by the Court on the 18th day of June, 1931?
- (b) In not directing the trustee in bankruptcy to surrender any claim in or to the premises described in his petition to marshal liens?
- (c) In not directing that the order of sale heretofore made in this proceeding be vacated, or in the alternative that it be established that Margaret B. Barringer has a lien on said premises, and that it be transferred to the proceeds of such sale prior to any lien, charge, or right of any of the persons mentioned in said order, or any person whatsoever?

The errors complained of by the petitioner, Margaret B. Barringer, are set forth in full in her petition to review.

And the said question is certified to the Judge for his opinion thereon.

Accompanying this certificate is a summary of the evidence on which said order was made.

(This Summary of Evidence is also made part

of record with Certificate of Review on Petition of Phoenix Title & Trust Company in same matter).

I return herewith as the record the following items:

1. The record book or minutes of this proceeding.
2. The petition on which this certificate is granted.
3. All Exhibits introduced in Evidence.
4. All pleadings and other papers filed with me herein which are pertinent to this review. [445]

This record is also made part of Record with Certificate of Review on Petition of Phoenix Title & Trust Company, in same matter.

Dated at Phoenix, Arizona, this 18th day of November, 1932.

R. W. SMITH,
Referee in Bankruptcy.

Filed Nov. 18, 1932. J. Lee Baker, Clerk, United States District Court for the District of Arizona.
By George A. Hillier, Deputy Clerk.

November 18, 1932.

TO THE HONORABLE F. C. JACOBS,
Judge of the United States District Court,
For the District of Arizona.

re: WINDSOR SQUARE DEVELOPMENT, INC.

Bankrupt, No. B-570-Phx.

I hereby transmit to you the petitions for review and certificates of review in the above entitled matter, together with the accompanying papers and records pertinent to the review.

I have on file in the records of the said bankrupt a reporter's transcript filed with me on the 12th day of April, 1932, long subsequent to the announcement of my decision in this case, and which transcript I am holding subject to your instructions. Said transcript has not been made a part of the record in the hearing upon the order sought to be reviewed and for that reason has not been sent up as a part of the record in this case, but which will be transmitted to the Court whenever I am directed so to do.

Respectfully submitted,

R. W. SMITH,

Referee in Bankruptcy. [446]

[Title of Court and Cause.]

REFEREE'S RECORD OF PROCEEDINGS UNDER TRUSTEE'S
PETITION TO MARSHALL LIENS AND SELL PROPERTY
FREE AND CLEAR OF ENCUMBRANCES.

Original Petition in Bankruptcy filed Oct. 25, 1930. Adjudicated Oct.
28, 1930.

Date	No.	Proceedings and Filings.
1931.		
June 6	31	Petition to marshall liens, sell property, etc.
“ “	32	Order fixing date for meeting to consider petition.
“ “	33	Copy notice of meeting.
“ 18		Hearing on trustee's petition to marshall liens, etc. Present trustee and by counsel, T. W. Nealon and Miss Birdsall, and W. H. Norman, creditor. Peti- tion granted and order to show cause entered. Adjourned sine die.
“ “	34	Order to show cause, etc.
“ “	35	Petition for service of order, etc.
“ “	36	Order for service, etc.
“ 29	39	Order authorizing sale of real estate free and clear of encumbrances, etc., made in open court June 18, 1931.
July 23	40	Marshall's return of service of order on M. B. Bar- ringer.
Aug. 7	41	Marshall's return of service of order to show cause, petition to marshall liens, etc., and order for serv- ice, etc.
“ 26	42	Answer of County of Maricopa and J. D. Calhoun, Treas.
“ 31	43	Answer of W. R. Wells.
Sept. 2	44	Answer of J. Allen Wells.
“ “	45	Answer of Raymond L. Nier.
“ “	46	Answer of E. L. Grose.
“ “	47	Answer of Margaret B. Barringer.
“ “	48	Answer of Phx. Title & Trust Co.
“ “	49	Answer of S. R. V. W. U. Ass'n.
“ 26	51	Stipulation (For continuance.)

WINDSOR SQUARE DEVELOPMENT, INC., RECORD OF PROCEEDINGS, ETC., CONT'D.

Date	No.	Proceedings and Filings.
1931.		
Oct. 15		Hearing by stipulation continued to Oct. 27, 1931.
“ 19	52	Amended answer of Phx. Title & Trust Co.
“ 26	54	Stipulation. (For continuance.)
“ 27		Hearing continued from Oct. 15, further continued to Nov. 14th, 1931, by stipulation.
Nov. 14		Hearing previously postponed from Oct. 27, 1931, continued to Nov. 25, 1931.
Nov. 23	55	Motion to strike redundant matter, etc., from answer of Margaret B. Barringer.
	56	Motion to strike redundant matter, etc., from amended answer of Phx. Title & Trust Co.
		[447]
“ “	57	Motion for further particulars of amended answer of Phoenix Title & Trust Co.
Nov. 25	58	Proof of publication of petition to marshall liens. etc.
“ “	59	Proof of publication of order to show cause.
“ “	60	Trustee's objections to claim of Margaret B. Barringer.
“ “		Hearing had on order to show cause. Present trustee and by counsel, Margaret B. Barringer, by counsel; Phx. Title & Trust Co., by counsel; E. L. Grose, by counsel; and Maricopa County Treasurer, by counsel. Reporter L. O. Tucker. Witness, L. J. Taylor, examined. Adj. to Nov. 27, 1931, at two P. M.
“ “	61	Respondent Barringer's Ex. #1 in evidence. (deed)
Nov. 27		Continued hearing had. Present parties as on Nov. 25. M. L. Hartley, of Phx. Title & Trust Co., sworn and examined.
		L. O. Tucker, reporter. Adj. to Nov. 30/31 at 2 P. M.
Nov. 27	62	Respondent Barringer's Ex. #2 in evidence. (D. of Tr.)

WINDSOR SQUARE DEVELOPMENT, INC., RECORD OF PROCEEDINGS, ETC., CONT'D.

Date	No.	Proceedings and Filings.
1931.		
Nov. 27	63	Respondent Barringer's Ex. #3 in evidence (note)
" "	64	Respondent Barringer's Ex. #4 in evidence (Mod. D. of Tr.)
" "	65	Respondent Barringer's Ex. #5 in evidence (Mod. D. of Tr.)
" "	66	Respondent Barringer's Ex. #6 in evidence (copy of Letter)
" "	67	Respondent Barringer's Ex. #7 in evidence (tax receipts)
" "	68	Respondent Barringer's Ex. #8 in evidence (Expend. of M. B. B.)
" 30		Continued hearing on order to show cause. Present parties as before. Reporter, L. O. Tucker. Witness examined: E. J. Bennett, Harry Kay, Geo. E. Lilley and R. J. Nunnely. Adj. to Dec. 2, 1931, at ten A. M.
" "	69	Trustee's Ex. "A" for identification. (tract map)
Dec. 2		Continued hearing on order to show cause. Present parties as before. Joseph T. Morgan, Reporter. Witnesses examined and <i>and</i> exhibits filed. Adj. to Dec. 3, 1931, at ten A. M., for all purposes.
" "	70	Respondent Barringer's No. 9 in evidence (Assignment of T. J. Tunney)
" "	71	Respondent Barringer's No. 10 in evidence (assignment of Owens-Dinmore)
" "	72	Respondent Barringer's No. 11 in evidence (assignment, Tunney to Owens)
" "	73	Respondent Barringer's No. 12 in evidence (assignment, Owens to W. Sq. Dev.)

WINDSOR SQUARE DEVELOPMENT, INC., RECORD OF PROCEEDINGS, ETC., CONT'D.

Date	No.	Proceedings and Filings.
1931.		
Dec. 3		Continued hearing on order to show cause. Present parties as before and respondent W. R. Wells & counsel and respondent E. L. Grose & counsel. Exhibits filed. Adj. to Dec. 10, 1931, at ten A. M.
" "	79	Respondent E. L. Grose's Ex. No. 1 in evidence (Contract of purchase)
" "	80	Respondent E. L. Grose's Ex. No. 2 in evidence (Contract of purchase)
" "	81	Respondent E. L. Grose's Ex. No. 3 in evidence (3 small sheets)
" 5	82	Objections to sale of water system. (M. B. Barringer)
" 10		Continued hearing on order to show cause. Reporter, L. O. Tucker. Present the trustee and by counsel; Margaret B. Barringer, by counsel; Phoenix Title & Trust Co., by counsel; and E. J. Bennett. Answer of respondent Phx. Title & Trust Co. Witness L. J. Taylor examined. Exhibits: Respondent Phx. Title & Trust Co.'s exhibit No. 1 (list of lots) to be prepared and filed by Taylor. Respondent Barringer's No. 13 (statement of lots) to be prepared and filed. Adj. to Dec. 10, 1931 at 2 P. M.
" "		Continued hearing on order to show cause, had at 10 P. M. Reporter L. O. Tucker. Present the trustee and by counsel; Margaret B. Barringer, by counsel; and Phx. Title & Trust Co., by counsel. Trustee's cause. Witnesses examined: Thomas Maddock and W. M. Smith. Exhibits filed. Adj. to Dec. 12, 1931, at 10 A. M.
" "	83	Trustee's Ex. No. A in evidence. (Record No. 69—Map of tract—Trustee's "A" for Iden.)
" "	84	Trustee's Ex. No. B in evidence. (Petition in Bankruptcy)
" "	85	Trustee's Ex. No. C in evidence. (Copy order of adjudication)

WINDSOR SQUARE DEVELOPMENT, INC., RECORD OF PROCEEDINGS, ETC., CONT'D.

Date	No.	Proceedings and Filings.
1931.		
Dec. 10	86	Trustee's Ex. No. D in evidence. (D. Certified copy of Trustee's bond)
" "	87	Trustee's Ex. No. E in evidence. (Claim filed by Barringer (No. 19))
" "	88	Trustee's Ex. No. F in evidence. (Pet. in intervention)
" "	89	Trustee's Ex. No. G in evidence (Copy order of sale free and clear of liens)
" "	90	Trustee's Ex. No. H in evidence. (Inventory and appraisal)
" "	91	Trustee's Ex. No. I in evidence. (Pet. of appraisers for fee.)
" "	92	Trustee's Ex. No. J in evidence. (Schedules A (3) of Bankrupt's amended Sched.)
" "	93	Trustee's Ex. No. K in evidence. (Schedule B (1) of Bankrupt'd amended Sched.)
" "	94	Trustee's Ex. No. L in evidence. (Schedule A (3) of original schedules filed 10/30/30)
(Exhibits in original Referee's record to be replaced by certified copies.)		
[449]		
Dec. 12		Continued hearing on order to show cause. Present trustee, by counsel; M. B. Barringer, by counsel; Phoenix Title & Trust Co., by counsel; and several witnesses. Witnesses examined: L. J. Taylor, Forest Whitney and Henry F. Leiber. Exhibits filed. Adj. to Dec. 17, 1931, at ten A. M.
" "	98	Trustee's "M" in evidence. (Statement of receipts and disbursements—T. & T. Co.)
" "	99	Trustee's "N" in evidence. (Statement of lots conveyed since 10/25/30)
" "	100	Trustee's "O" in evidence. (Workmen's copies—Leiber Sign Co.—4 sheets.)
" "	101	Respondent Barringer's Ex. "13" in evidence. (Statement of T. & T. Co. re lots held under sales agreement)

WINDSOR SQUARE DEVELOPMENT, INC., RECORD OF PROCEEDINGS, ETC., CONT'D.

Date	No.	Proceedings and Filings.
1931.		
Dec. 12	102	Respondent Phx. T. & T. Co.'s Ex. "1" in evidence. (List of lots being sold under contract)
" 17		Continued hearing on order to show cause. Jos. E. Morgan, Reporter. Present the trustee and counsel; M. B. Barringer, by counsel; Phx. Title & Trust Co., by counsel. For Trustee: Witnesses W. H. Norman, D. R. Whitney, and Geo. H. Lilley, examined. Exhibits filed. Adj. to Dec. 18, 1931, at 10 A. M.
" "	103	Trustee's "P" in evidence. (Certified copy order confirming sale of real estate)
" "	104	Trustee's "Q" in evidence. (Certified copy order confirming sale of real estate)
" "	105	Trustee's "R" in evidence. (All claims filed against estate except Barringer claim of lien)
Dec. 18		Continued hearing on order to show cause. Present trustee, by counsel; M. B. Barringer, by counsel; and Phx. Title & Trust Co., by counsel. L. O. Tucker, Reporter. L. J. Taylor, witness, examined. Exhibits filed. All parties rest. Question to be submitted on briefs. Respondents to have 30 days to file opening briefs, or such extension of time as necessary to allow 15 days from date of filing transcript. Trustee to have 30 days thereafter for filing answering brief. Respondents to have ten days thereafter in which to file reply briefs. Adjourned.
" 18	106	Resp. Barringer's Ex. "14" in evidence. (Trust instructions)
" "	107	Resp. Barringer's Ex. "15" in evidence (Trust instructions)
" "	108	Resp. Barringer's Ex. "16" in evidence (Trust instructions)

WINDSOR SQUARE DEVELOPMENT, INC., RECORD OF PROCEEDINGS, ETC., CONT'D.

Date	No.	Proceedings and Filings.
1932.		
Jan. 30	109 $\frac{1}{2}$	Brief of Phoenix Title & Trust Co.
Feb. 1.	109 $\frac{3}{4}$	Brief of Margaret B. Barringer.
March 10	110 $\frac{1}{2}$	Brief of trustee.
Mar. 22		Referee's decision fixing and marshalling liens announced and counsel requested to draft formal order and decree.
Apr. 12	112	Transcript of testimony. (2 red volumes)
July 27	113	Stipulation.
Sept. 17	114	Order and Decree fixing and marshalling liens, etc.
" 27	115	Exceptions to order and decree of W. R. Wells.
" 29	116	Affidavit of service.
" "	117	Exceptions of Margaret B. Barringer.
" "	118	Exceptions of Phoenix Title & Trust Co.
" "	119	Petition for review—Margaret B. Barringer.
" "	120	Petition for review—Phoenix Title & Trust Co.

[Title of Court and Cause.]

TRUSTEE'S PETITION TO MARSHAL LIENS
AND SELL PROPERTY FREE AND
CLEAR OF ENCUMBRANCES.

Comes Now GEORGE E. LILLEY, as trustee in bankruptcy of the estate of Windsor Square Development, Inc., a corporation, bankrupt, and respectfully represents:

That he is the duly qualified and acting trustee in bankruptcy of the estate of Windsor Square Development, Inc., a corporation, bankrupt herein;

That the said Windsor Square Development, Inc.,

a corporation, was duly adjudged a bankrupt on the 28th day of October, 1930, upon a voluntary petition filed in the District Court of the United States in and for the District of Arizona;

That the defendant, Margaret B. Barringer, is a resident of the Town of Haverford, in the State of Pennsylvania,; [451]

That the said defendants, Phoenix Title and Trust Company, Salt River Valley Water Users' Association, and Central Arizona Light and Power Company, are each and all, corporations, duly organized and existing under and by virtue of the laws of the State of Arizona, and each having its principal place of business in the City of Phoenix, State of Arizona;

That the defendant, County of Maricopa, is a subdivision of the State of Arizona;

That the defendant, John D. Calhoun, is the County Treasurer of the State of Arizona, and that Mitt Sims is the Treasurer of the State of Arizona;

That the defendant, Thomas J. Tunney, is a resident of the City of Phoenix and County of Maricopa, State of Arizona;

That among the assets belonging to the estate of said bankrupt, and in the possession of your petitioner as trustee in bankruptcy, is the following described real estate, situated in the County of Maricopa, in the State of Arizona, District of Arizona, more particularly described as follows:

The following lots in Windsor Square, according to the Map or Plat of said Windsor Square, recorded in the office of the County Recorder of Mari-

copa County, Arizona, in Book 20 of Maps at page 37 thereof:

Block 1—Lots # 3, 4, 5, 6, 7, 8, 9, 10, 11, 18, 19.

Block 2—Lots 3, 4, 5, 6, 8, 10, 11, 12, 13, 15,
16, 17, 18, 19, 20, 21, 22, 23, 27, 29,
[452] 31, 32, 33, 34, 36, 38, 41, 42.

Block 3—Lots 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 23, 25, 26,
27, 28, 29, 30, 32, 33, 34, 35, 36, 39.

Block 4—Lots 3, 7, 8, 9, 11, 12, 13, 14, 15, 16,
17, 19, 20, 21, 25, 26, 27, 28.

Block 5—Lots 3, 5, 6, 9, 11, 13, 15, 16, 17, 19,
22, 23.

Block 6—Lots 1, 3, 5, 7, 8, 9, 10.

Block 7—Lots 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13,
14, 19, 21, 27, 29, 31, 33, 34, 35, 37, 38.

Block 8—Lots 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12,
13, 15, 17, 18, 20, 22, 23, [453] 30, 32,
33, 34, 35, 36, 37, 38, 39, 40, 41, 42,
43, 44.

Block 9—Lots 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 21.

Block 1—Lots 2, 16.

Block 3—Lot 22.

Block 4—Lots 2, 24.

Block 7—Lots 15, 17, 23, 25, 26.

Block 8—Lot 9.

That said Margaret B. Barringer, as your petitioner is informed, claims to have an interest in said property by way of a lien, by virtue of an instrument styled "Declaration of Trust", the parties to which as petitioner is informed, are the said Margaret [454] B. Barringer, the Phoenix Title and Trust Company, and Thomas J. Tunney, which said instrument bears date the 9th day of January, 1929, and which has been subsequently modified by the parties thereto by various written agreements;

That said so-called "Declaration of Trust" and the various modifications thereof have never been recorded and that the amounts heretofore received thereunder by said Margart B. Barringer since the adjudication in bankruptcy herein, are unknown to your petitioner;

That the alleged lien upon the above described property claimed by said Margaret B. Barringer is void as against the Trustee in bankruptcy and the creditors of the bankrupt for the reason that the same has never been recorded as required by the statutes of the State of Arizona, and that all of the debts of said bankrupt were contracted subsequent to the execution of said "Declaration of Trust", and for said reason, and other reasons not herein set forth, your petitioner denies the validity of said claim of lien of said Margaret B. Barringer;

That the defendant, Phoenix Title and Trust Company, claims to have an interest in said property, by way of a lien in favor of itself and of the hereinabove mentioned Margaret B. Barringer; that the nature and extent of the lien claimed by

said Phoenix Title and Trust Company is unknown to your petitioner, and he has not information sufficient to form a belief in regard thereto, and therefore, denies the validity of said claim of lien, and demands strict proof thereof, and of any and all amounts claimed to be due thereunder;

That the County of Maricopa and State of Arizona each have a lien upon said property, for taxes, the extent whereof [455] is not known to your petitioner, and cannot be known until a determination of the amount thereof by this court;

That your petitioner is informed and believes, and therefore alleges the fact to be that said County of Maricopa, State of Arizona, is claiming a lien against said property for taxes upon said property and a penalty upon said tax, which said penalty is in violation of the Constitution of the United States, and your petitioner denies the validity of said penalty and asks that the whole matter of the lien for taxes be submitted to this court for proper determination thereof, and the amount of the lien therefor fixed;

That the defendant, Salt River Valley Water Users' Association, claims a lien for assessments upon the lots hereinabove described, for water furnished thereon, the extent of which claim of lien is unknown to your petitioner, and your petitioner desires that the lien thereof, if any, shall be fixed and determined in this proceeding;

That the defendant, Central Arizona Light and Power Company, holds a contract with the predecessor in interest of your petitioner in regard to lights

and improvements furnished upon said premises, and claims, therefore, liens and rights under said contract, and your petitioner asks that such liens and rights, if any, be determined in this proceeding and fixed separately as to each lot;

That each of the other parties hereto claim some interest in the aforesaid premises, the nature and extent of which, is unknown to your petitioner and your petitioner therefore denies the validity of any claim or lien made by any of these defendants, and demands strict proof thereof; [456]

That the appraised value of said property is One Hundred Thirty-five Thousand Three Hundred Thirty-two Dollars and Eleven Cents (\$135,332.11), and there exists in the judgment of your petitioner as trustee, a substantial equity in said property after payment of all valid liens and encumbrances;

That in the judgment of your petitioner as trustee in bankruptcy, it is for the best interests of the estate and of the parties in interest that the said property be sold at private sale, free and clear of all encumbrances as the same may be determined in their validity and order of priority, and that this court should make an order for the sale of said property at private sale, free and clear of liens, either as a whole or in parcels as shall seem to the best interests of said estate, and that any liens against said property which this court shall have determined to be valid liens against said property, shall be transferred to the proceeds derived from the sale of said property in the order of priority determined by this court;

That your petitioner further believes that it is for the best interests of said estate that in said order of sale an upset price should be fixed, and that in the judgment of your petitioner as trustee in bankruptcy herein, a fair and reasonable amount to be fixed for said upset price is seventy-five per cent of the appraised valuation of said property:

WHEREFORE your petitioner as such trustee, prays the court for an order marshaling the liens upon and interests in said property, determining the validity, amount and priority of liens and interests, ordering its sale at private sale, either as a whole or in parcels, free and clear of all encumbrances and interests, and transferring the rights of the parties to the fund derived from said sale; fixing an upset price for said sale, the [457] same to be not less than seventy-five per cent of the appraised value of said property as appears by the appraisal heretofore filed in this court; and,

Further prays that ten days' due notice by mail of said sale may be given to all creditors as prescribed by the Bankruptcy Act; and,

Further prays for an Order to Show Cause upon the several parties defendant herein, requiring them to set up their rights within a time to be fixed by the court, or be forever deprived of asserting the same, and for any further and other relief as in equity is just.

GEO. E. LILLEY

Trustee in Bankruptcy of the Estate
of Windsor Square Development,
Inc., a corporation, Bankrupt.

District of Arizona,
State of Arizona,
County of Maricopa—ss.

GEORGE E. LILLEY, being first duly sworn, on oath, deposes and says: that he has read the foregoing petition and knows the contents thereof, and that the same is true to the best of his knowledge and belief.

GEO. E. LILLEY

Subscribed and sworn to before me this 6th day of June, 1931.

My commission expires: April 1, 1933.

[Notarial Seal]

ETHEL BANKS

Notary Public.

Filed June 6, 1931, R. W. Smith, Referee. [458]

[Title of Court and Cause.]

NOTICE OF MEETING.

To the Creditors of the Above Named Bankrupt:

Notice is hereby given that on the 18th day of June, 1931, at 2 o'clock in the afternoon, a meeting of the creditors of the above named bankrupt will be held at my office, No. 315 Ellis Building, in the City of Phoenix, Arizona, at which time the creditors may attend, consider Trustee's petition to marshall liens and sell property free and clear of encumbrances, and transact such other business as may properly come before the meeting.

Phoenix, Arizona, June 8, 1931.

R. W. SMITH,

Referee in Bankruptcy.

[Title of Court and Cause.]

ORDER TO SHOW CAUSE ON TRUSTEE'S
PETITION TO MARSHAL LIENS AND
SELL FREE AND CLEAR OF ENCUM-
BRANCES:

To: MARGARET B. BARRINGER; Phoenix Title and Trust Company, a corporation; Salt River Valley Water Users' Association, a corporation; Central Arizona Light and Power Company, a corporation; County of Maricopa; State of Arizona; John D. Calhoun, County Treasurer of the County of Maricopa, State of Arizona; Mitt Sims, Treasurer of the State of Arizona; W. R. Wells, Raymond L. Nier; J. Allen Wells; E. L. Grose; Glen E. Weaver; E. R. Foutz; Lucille Nichols; Nellie B. Wilkinson; Susie M. Wallace, and Thomas J. Tunney.

You are hereby notified that the petition of George E. Lilley, as trustee of the estate and effects of Windsor Square Development, Inc., a corporation, the above named bankrupt, has been filed before the undersigned Referee, praying the court for an order to sell free from liens and interests, certain property in the possession of said court, in which property you are said to claim an interest by way of lien or otherwise, which said trustee in his petition denies; and for an order marshaling the liens and interest claimed upon said property, and determining the validity, extent and priority thereof; and that upon motion of said petitioner, at the hearing whereof no adverse interest was represented, it is [459]

ORDERED That you shall answers and set up your claim as to the said property described in petition hereto annexed before the undersigned Referee of this court in bankruptcy, in the City of Phoenix, in said District of Arizona, on or before the 2nd day of September, 1931, or be forever debarred from asserting the same, and that thereafter, to wit: on the 15th day of October, 1931, at 10 A. M. at the said office of the undersigned, the said trustee's petition and your answer thereto will be heard, and at said time and place, you shall show cause, if any you have, why such order should not be granted and such action taken as prayed for in said petition.

WITNESS the undersigned Referee of said court in bankruptcy at Phoenix, in the said District of Arizona, this 18th day of June, 1931.

R. W. SMITH

Referee in Bankruptcy.

Filed June 18, 1931, R. W. Smith, Referee.

(Annexed to the foregoing order to show cause is the return of the United States Marshal for the District of Arizona, showing due service within the District of Arizona of said order to show cause on

each of the persons hereinafter named, on the date mentioned opposite the name of each such person, to-wit:

June 6, 1931,	Central Arizona Light & Power Company.
“ 30, “	Thomas J. Tunney.
“ “ “	Salt River Valley Water Users' Association.
“ “ “	County of Maricopa.
“ “ “	Susie Wallace.
July 2, “	Lucille Nichols.
“ “ “	John D. Calhoun, Treasurer of Maricopa County.
“ 6 “	Allen Wells.
“ “ “	W. R. Wells.
“ 7 “	E. L. Grose
“ “ “	Nellie B. Wilkinson.
“ “ “	Ramyond L. Nier

[460]

July 9, 1931,	E. R. Foutz.
“ “ “	Thomas J. Tunney.
“ “ “	State of Arizona.
“ “ “	Mitt Sims, Treasurer of the State of Arizona.
“ 18, “	Governor of the State of Arizona.
Aug. 3, “	Glen E. Weaver.)

[Title of Court and Cause.]

PETITION FOR SERVICE UPON NON-RESIDENT LIEN HOLDERS AND CLAIMANTS.

To the Hon. R. W. SMITH, Referee in Bankruptcy in and for the District of Arizona:

YOUR PETITIONER, as Trustee in Bankruptcy of the estate of the above named bankrupt, respectfully represents:

That he is the duly appointed, qualified and acting Trustee of the estate of the above named bankrupt;

That heretofore, towit, on the 6th day of June, 1931, your petitioner duly filed in this proceeding, his petition praying for an order marshaling the liens and rights of parties in and to the real estate belonging to said bankrupt's estate, situated in Maricopa County, State of Arizona, described as follows, towit:

The following lots situated in Windsor Square according to the map or plat of said Windsor Square recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 20 of Maps, at page 37 thereof;

(Here follows identical schedule of blocks and lots listed in Trustee's Petition to Marshal Liens and Sell Property Free and Clear of Encumbrances, which appears *ante* pages 170).

and directing the sale of said property, clear and free therefrom, with transfer of all the rights of the parties to the proceeds of sale, and said petition is still pending and undetermined;

That upon said petition an Order to Show Cause has been duly issued; [461]

That among the parties claiming to have rights in or to said property by right of lien or otherwise is Margaret B. Barringer, who is a non-resident and who cannot be served personally within this District with said Order to Show Cause, but who, as petitioner is informed and believes, can be served personally outside the said District, towit, in Haverford, Pennsylvania.

That no previous order for service on said party has been made herein.

WHEREFORE, your petitioner prays the Court for an order directing him to cause service to be made upon said Margaret B. Barringer outside the District by personal service of certified [462] copies of said petition to Marshal Liens and Sell Property Free and Clear of Encumbrances, and of Order to Show Cause, and of this Order, and for such other and further relief as is just.

GEO E. LILLEY

As Trustee in Bankruptcy of the Estate
of Windsor Square Development, Inc.,
a corporation, Bankrupt.

United States of America,
State and District of Arizona,
County of Maricopa—ss.

GEORGE E. LILLEY, being first duly sworn, on oath deposes and says: That he has read the foregoing petition and knows the contents thereof, and that the same is true to the best of his knowledge and belief.

GEO. E. LILLEY

Subscribed and sworn to before me this 17th day
of June, 1931.

[Notarial Seal]

W. W. PICKRELL

Notary Public.

My commission expires: Jan. 15, 1934.

Filed June 18, 1931. R. W. Smith, Referee.

[Title of Court and Cause.]

ORDER FOR SERVICE ON NON-RESIDENTS
IN MARSHALING OF LIENS AND SALE
FREE AND CLEAR OF ENCUMBRANCES.

THE PETITION of the Trustee for an order for service upon non-resident lien-holders and adverse claimants having been duly filed herein, and having come on for hearing, at the hearing whereof no adverse interest was represented; and it appearing that [463] this is a proceeding to marshal liens upon, and interests in, real estate in this, the District Court of the United States for the District of Arizona, and to sell said real estate clear and free therefrom; and that said Margaret B. Barringer is not an inhabitant of, nor found within this District, and that she has not voluntarily appeared in this section, NOW, upon this 18th day of June, 1931,

IT IS ORDERED that said Margaret B. Barringer, and all other non-resident lien-holders and adverse claimants, appear, plead, answer or demur to said Trustee's petition by the 2nd day of September, 1931, in default whereof the Court will proceed to the hearing and adjudication of the rights of said parties in said real estate; and

IT IS FURTHER ORDERED that certified copies of this Order and of the Trustee's Petition to Marshal Liens and Sell Property Free and Clear of Encumbrances, and Order to Show Cause thereon, be served on the said Margaret B. Barringer, at least thirty days before the date above mentioned,

by the United States Marshal for the District of Pennsylvania;

IT IS FURTHER ORDERED that the said Order to Show Cause be served upon all non-resident defendants by publication of same once a week for four successive weeks preceding the date set for filing answer to said petition, in the Arizona Weekly Gazette the first of said publications to be not less than thirty days before the day set for such filing.

IT IS FURTHER ORDERED that certified copies of this Order be served on the person or persons in possession or in charge of said property, if any there be.

Dated at Phoenix, Arizona, this 18th day of June, 1931.

R. W. SMITH

Referee in Bankruptcy. [464]

United States of America,
District and State of Arizona—ss.

I, the undersigned Referee in Bankruptcy, do hereby certify that the foregoing is a true and correct copy of an order made and entered by me in the above entitled proceedings.

Dated at Phoenix, Arizona, this day of June, 1931.

.....
Referee in Bankruptcy

United States of America,
District and State of Arizona—ss.

I, the undersigned Clerk of the United States District Court for the District of Arizona, do hereby certify that R. W. Smith, Esq., is a Referee in Bankruptcy of this Court; that he is in charge of said bankruptcy proceedings of Windsor Square Development, Inc., a corporation, bankrupt; and that the signature to the foregoing copy of his order is his signature.

IN TESTIMONY WHEREOF I have hereunto set my hand and the seal of said Court at my office in Phoenix, in said District, this day of June, 1931.

Clerk of the District Court of the
United States for the District
of Arizona.

Filed June 18, 1931. R. W. Smith, Referee. [465]

PHOENIX, ARIZONA, July 18th, 1931.

J. Buryl King, being first duly sworn, deposes and says that he is the Assistant Cashier of the Arizona Weekly Gazette a newspaper of general circulation published weekly at Phoenix, Arizona, and that the attached advertisement was published in the said paper for a period of four days, as follows:

June 27th, July 4th, 11th, 18th, 1931.

J. BURYL KING

Assistant Cashier.

Subscribed and sworn to before me this 18th day of July, A. D., 1931.

My commission expires May 21st, 1935.

[Notarial Seal]

SIDNEY MYERS

Notary Public.

(Annexed to the foregoing affidavit is a copy of the Order to Show Cause of Trustee's Petition to Marshal Liens and Sell Free and Clear of Encumbrances, signed by the Referee on June 18, 1931).

Filed Nov. 25, 1931. R. W. Smith, Referee.

[Title of Court and Cause.]

ORDER AUTHORIZING SALE OF REAL ESTATE FREE AND CLEAR OF ENCUMBRANCES AND DIRECTING ALL LIENS HELD BY ANY LIEN HOLDERS UPON SAID PREMISES TO BE TRANSFERRED TO THE PROCEEDS OF SAID SALE. [466]

AT A REGULARLY CALLED MEETING of the creditors in the above entitled estate, held this 18th day of June, 1931, of which meeting due notice was given to all creditors of said estate, notifying said creditors that at said meeting that they should attend and consider the trustee's petition to marshal liens and sell property, described in said petition, free and clear of encumbrances, and transact such other business as might properly come before the meeting; and at said meeting the trustee's petition to marshal liens and sell property free and clear of encumbrances as hereinbefore mentioned having

been duly presented to the court by the trustee in person and by his attorney, Thomas W. Nealon, and no objection being made by any creditors present to the making of such order of sale, or to the granting of trustee's petition to marshal liens;

And it appearing to the Court after due consideration of said Trustee's petition and argument of Counsel thereon, that said petition should be granted and all proven liens marshalled, and that such sale should be made free and clear of liens as aforesaid;

And it further appearing that the appraised value of the lands described in the trustee's petition was and is substantially in excess of any liens that might be existing thereon; and the court having, as prayed for in said petition, directed the making of service by order to show cause upon each of the parties named in the trustee's petition as claiming any liens or interest in said premises, and having issued an order to show cause directed to each of said persons to appear and show on a date named therein, what, if any, liens or claims the said alleged lien holders or claimants might have upon said premises, and having prescribed the form of service thereon and fixed the date upon which the said alleged lien holders should answer the trustee's [467] petition and set up whatever liens or claims they might claim or hold, as September 2, 1931, and fixed the date of the hearing thereon as October 15, 1931;

And it further appearing to the Court that the appraised value of said property is \$135,332.11 and

that it would be to the interest of said estate, and protect as well the rights of any persons holding valid and subsisting liens against said real estate, that an upset price should be fixed in this order of sale;

And it further appearing that seventy-five per cent of the said appraised value would be a fair sum to fix for an upset price in such sale;

And it further appearing that it would be for the best interest of the estate and all parties in interest that said property should be sold at private sale, free and clear of all encumbrances, as the same may be determined by this Court in their validity and order of priority, and that this court should make an order for the sale of said property at private sale, free and clear of such liens, either as a whole or in parcels, as shall seem to the best interest of said estate, and that any liens against said property which this court shall determine to be valid liens against said property prior to the time of said sale, and the date when said sale shall have been made or confirmed by this Court, should be transferred to the proceeds derived from the sale of said property in the order of priority determined by this Court: NOW, at this meeting, at which no adverse interest appears,

IT IS HEREBY ORDERED that said trustee shall sell all of the lands described in his petition for sale, at private sale, free and clear of all encumbrances, either as a whole, or in part, as shall seem to the best interest of said estate, and an upset price of seventy-five percent of the appraised

value of said property is hereby fixed as the minimum at which said real estate shall [468] be sold; and in the event of a sale of same in separate parcels, then 75% of the appraised value as shown by the appraisalment on file in this Court is fixed as the minimum price for the sale of any of said parcels; and such sale or sales are to be duly reported to this Court by the trustee for confirmation or rejection.

IT IS FURTHER ORDERED that while the trustee may receive bids for the property described in the trustee's petition in accordance with this order, and if such bid or bids shall equal or exceed the upset price fixed herein, he shall make return of sale thereof to this court, but there shall be no confirmation of such sale or sales until there shall have been a hearing upon the order to show cause directed to such claimants issued out of this court this day, unless same shall be consented to by those persons claiming liens upon said premises, and each of said claimants shall have an opportunity of bidding for said lands as herein provided.

AND IT IS FURTHER ORDERED that the petition of the trustee that the liens against said real estate be determined and marshaled, be granted and that their validity and priority be determined upon the hearing fixed in the order to show cause issued out of this court this day for that purpose; that said real estate is described as follows: all being situate in the County of Maricopa, State of Arizona, to-wit:

The following lots situated in Windsor Square according to the map or plat of said Windsor Square recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 20 of Maps, at page 37 thereof; [469]

(Here follows identical schedule of blocks and lots listed in Trustee's Petition to Marshal Liens and Sell Property Free and Clear of Encumbrances, which appears ante page 170).

IT IS FURTHER ORDERED that any person or persons who shall be found to have a valid and subsisting lien upon said described lands at the hearing herein, and this day provided for may bid at said sale and apply such subsisting lien so found to be valid on the purchase price of said lands the same as if such liens were cash.

AND IT IS FURTHER ORDERED that any liens or claims against said property which this Court shall have determined to be valid liens against same, shall be transferred to the proceeds derived from the sale of said property in the order of priority determined by this Court, upon the hearing for that purpose this day ordered by this Court and after the service of order to show on the various parties interested directing them to appear and assert their claims as provided in such orders to show cause.

DONE IN OPEN COURT the day and date first above mentioned.

R. W. SMITH

Referee in Bankruptcy

Filed June 29, 1931. R. W. Smith, Referee. [470]

[Title of Court and Cause.]

ANSWER OF LIEN-HOLDER MARGARET B.
BARRINGER TO TRUSTEE'S PETITION
TO MARSHAL LIENS AND SELL, AND
PETITION IN INTERVENTION.

To: R. W. Smith, Esq., Referee in Bankruptcy:

MARGARET B. BARRINGER, one of the defendants in the above entitled proceedings for the marshalling of liens and sale of property, appearing by Messrs. Ellinwood & Ross and Wm. H. MacKay, respectively, represents that:

I.

That on or about the 20th day of December, 1928, Thomas J. Tunney, of Phoenix, Maricopa County, Arizona, for value received, executed and delivered to said Margaret B. Barringer, his certain promissory note, dated December 20th, 1928, payable in the principal sum of Eighty-five Thousand (\$85,000.00) Dollars, with interest thereon from date at the rate of seven percent (7%) per annum, payable quarterly, together with interest on unpaid installments of interest at the rate of ten percent (10%) per annum and attorney's fees, which said promissory note is in words and figures as follows, to-wit:

\$85,000.00 Phoenix, Arizona, December 20, 1928

Three years after date, for value received, I promise to pay to MARGARET B. BARRINGER or order, at 130 West Adams Street, Phoenix, Arizona, the sum of Eighty-five Thou-

sand and no/100 Dollars, with interest thereon from December 20, 1928, to maturity of this note, at the rate of seven percent per annum, payable quarterly.

Should the interest as above not be paid when due, it shall thereafter bear interest at ten percent per annum until paid.

Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note, with interest from date of such default at ten percent per annum until paid on the entire unpaid principal and accrued interest. [471]

Should the principal hereof not be paid in full at maturity, it shall thereafter bear interest at ten percent per annum until paid.

Principal and interest payable in lawful money of the United States of America.

Should suit be brought to recover on this note, I promise to pay as attorney's fees 5% additional on the amount found due hereunder.

This note is secured by Declaration of Trust No. 418 of the Phoenix Title and Trust Company.

(Signed) THOMAS J. TUNNEY.

That to secure payment of said promissory note, interest and attorney's fees, Phoenix Title & Trust Company, a corporation, for a good and sufficient consideration, executed its Declaration of Trust,

dated January 9th, 1929, a copy of which Declaration of Trust is hereunto annexed marked "Exhibit A" and by reference made a part hereof, and that thereafter, with the consent of said Margaret B. Barringer and said Thomas J. Tunney, said Phoenix Title & Trust Company executed certain amendments to said Declaration of Trust, copies of which amendments are hereunto annexed marked "Exhibit B" and "Exhibit C", respectively, the lands in said Declaration of Trust being described as follows, to-wit:

Lots One (1) to Ten (10) inclusive, and Lots Twelve (12) to Eighteen (18), inclusive, COLTER TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 6 of Maps, page 35 thereof:

EXCEPT tract thirty (30) feet east and west by twenty-five (25) feet west and south in the Southeast corner of Lot Eighteen (18), (referred to as Lot Seven (7) in deed), COLTER TRACT as more fully described in that certain deed to the S.R.V.W.U.A., recorded February 20, 1919, in Book 132 of Deeds, page 158, records of Maricopa County, Arizona; and

EXCEPT rights of way for canals, laterals and ditches.

Said property having been, pursuant to said Declaration of Trust, subsequently platted and subdivided as a subdivision under the name of "Windsor Square", the plat whereof is recorded in the [472]

office of the County Recorder of Maricopa County, Arizona, in Book of Maps, at page thereof.

That said Thomas J. Tunney has failed to pay the installments of interest which, under the terms of said note, fell due quarterly during that period commencing March 20, 1930, and ending September 20th, 1930, each inclusive, and that during the period commencing July 15th, 1930, and ending December 20th, 1930, said Margaret B. Barringer, for the purpose of preserving her said security pursuant to the provisions in said Declaration of Trust contained, advanced various sums of money, which, together with interest on the respective items thereof from the date of their payment of November 5th, 1930, at the rate of eight percent (8%) per annum, amounted to One Thousand Nine Hundred Sixty-two and $\frac{33}{100}$ (\$1,962.33) Dollars, all of which advances and interest were on November 5th, 1930, and now are wholly unpaid.

That on November 5th, 1930, said Margaret B. Barringer, pursuant to the provisions in said Declaration of Trust and amendments thereto, duly declared the whole amount of said indebtedness, interest and advances immediately due and payable and there was due on said 5th day of November, 1930, to her, the following sums, to-wit:

Principal of Note,	\$69,924.70	
Installment of Interest due 3/20/30,	1,266.66	
Interest thereon at 10% to 11/5/30,	97.13	
Installment of interest due 6/20/30,	1,252.86	
Interest thereon at 10% to 11/5/30,	49.97	
Installment of Interest due 9/20/30,	1,229.84	
Interest thereon at 10% to 11/5/30,	15.36	
Advances with interest at 8% to 11/5/30,	1,962.33	
Total		\$75,777.85
		[473]

and said sums, together with interest thereon at the rate of ten percent (10%) per annum from November 5th, 1930, are now due and payable according to the terms of said promissory note, said Declaration of Trust and the amendments thereto.

That it is expressly provided in said promissory note and/or said Declaration of Trust and amendments thereto, said Margaret B. Barringer shall be entitled to recover in the event of suit five percent (5%) of the whole amount found due under said note and Declaration of Trust as attorney's fees, which said attorney's fee is, by the terms of said instruments, a lien upon said premises; that said

Margaret B. Barringer has employed attorneys to foreclose her said lien and has agreed to pay them a reasonable attorney's fee for their services, and that five per cent (5%) of the whole amount due under said note and Declaration of Trust is a reasonable attorney's fee.

II.

That on November 5, 1930 this defendant having declared the whole amount of said indebtedness, interest and advances immediately due and payable as in Paragraph I hereinabove mentioned, all of the rights of said Thomas J. Tunney, his successors and assigns (including the bankrupt herein) to sell or dispose of any of the above described premises or any portion thereof in accordance with the terms of said Declaration of Trust and Amendments thereto immediately ceased and terminated; that a portion of said premises had prior to said date been released from this defendant's lien and that prior to said date said Thomas J. Tunney, his successors and assigns, had pursuant to the terms of said Declaration of Trust and Amendments thereto executed contracts with various and sundry individuals for the sale of those certain portions of said premises described according to said map of plat of "Windsor Square" in "Exhibit E" hereunto annexed and made a part hereof; and [474] that of all those lots described in "Exhibit D" hereunto annexed and made a part hereof, were on said date wholly undisposed of and that no contracts for the sale thereof had theretofore been entered into with any persons

whomsoever; that this defendant, Margaret B. Barringer, by virtue of said Declaration of Trust and Amendments thereto and by virtue of the premises has had ever since the 9th day of January, 1929 and now has a first and best lien upon all of the premises described in said Exhibits "D" and "E", and also a first lien upon all of the contracts, and upon all proceeds accruing or to accrue therefrom, entered into between said Thomas J. Tunney, his successors and assigns, with various and sundry persons for the sale of the lots described in said Exhibit "E", which said lien of this defendant is prior and superior to any right, title and interest of said Windson Square Development, Inc., the bankrupt corporation aforesaid, in, to or upon the said premises described in Exhibits "D" and "E", respectively, and in, to and upon and contracts affecting lots described in said Exhibit "E" entered into by said Thomas J. Tunney, his successors and assigns, and/or the trustee named in said Declaration of Trust pursuant to the terms thereof, or the Amendments thereto for the sale of any such lots; and that any right, title and interest of said bankrupt corporation in or to said property, and/or said contracts, is subject, subservient and inferior to said Margaret B. Barringer's lien as aforesaid; that this defendant became vested with and still possesses a lien on said property in the amount aforesaid, including interest and attorney's fees, and that said lien is a first and best lien.

III.

That the property hereinabove described and subject to this defendant's lien is of insufficient value to satisfy the indebtedness owing to this defendant secured thereby and that there is no equity therein for unsecured creditors. [475]

IV.

This defendant admits that said Declaration of Trust and Amendments thereto hereinabove in Paragraph I mentioned have not been placed of record and alleges that any right, title and interest of said bankrupt corporation, which is subservient to this defendant's lien as aforesaid, arises by virtue of said Declaration of Trust and Amendments thereto and not otherwise and that said bankrupt corporation's interest, if it has any interest, is an inferior and subservient right or interest created by said Declaration of Trust and Amendments thereto and that in law, justice and equity any right, title, lien or interest of said bankrupt corporation is inferior and subservient to this defendant's lien as hereinabove mentioned; that this defendant is without sufficient knowledge or information upon which to base a belief as to whether or not said bankrupt corporation has any right, title, lien or interest whatsoever in, to or upon any of the premises hereinabove mentioned and, therefore, denies that said bankrupt corporation has any right, title or interest whatsoever in the premises described in the petition of Trustee to marshal liens and sell.

V.

Defendant denies all and singular the allegations in said petition contained, save and except those hereinabove expressly denied or admitted.

WHEREFORE, this defendant prays the Court for an order finding the validity, extent and priority of her said lien, as above claimed, and for an order directing the Trustee to abandon all title to said property and to disclaim the same, and for such other and further relief as is just.

ELLINWOOD & ROSS,

WM. H. MACKAY,

Attorneys for Defendant,

Margaret B. Barringer. [476]

State of Arizona

County of Maricopa—ss.

WM. H. MACKAY, being first duly sworn, deposes and says: That he is one of the attorneys for Margaret B. Barringer, one of the defendants named in the above entitled action, and that he makes and files this affidavit for and on behalf of said Margaret B. Barringer for the reason that she is at the date of filing hereof without the State of Arizona, her permanent residence being in the State of Pennsylvania; that affiant is well acquainted with the matters and things alleged in the foregoing answer; that affiant has read the above and foregoing answer and knows the contents thereof and that the same is true in substance and in fact, save and except as to those

matters therein stated on information and belief and as to them he believes it to be true.

WM. H. MACKAY.

Subscribed and sworn to before me this 2nd. day of September, 1931.

T. P. WALTON.

My commission expires April 14, 1933.

(Here follows copies of Respondent Barringer's Exhibits in evidence Nos. 2, 4 and 5, which appear, *infra*, pages 423, 454, (328) 455, together with Exhibits "D" and "E" which follow below.

"EXHIBIT D"

Block 1—Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 18, 19.

Block 2—Lots 3, 4, 5, 6, 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 29, 31, 32, 33, 34, 36, 38, 41, 42. [477]

Block 3—Lots 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 39.

Block 4—Lots 3, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 25, 26, 27 and 28.

Block 5—Lots 3, 5, 6, 9, 11, 13, 15, 16, 17, 19, 22 and 23.

Block 6—Lots 1, 3, 5, 7, 8, 9, 10.

Block 7—Lots 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 19, 21, 27, 29, 31, 33, 34, 35, 37 and 38.

Block 8—Lots 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 17, 18, 20, 22, 23, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

Block 9—Lots 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 21, 28. [478]

“EXHIBIT E”

DESCRIPTION:

Lot 16—Block 1
Lot 22—Block 3
Lot 2—Block 4
Lot 24—Block 4
Lot 15—Block 7
Lot 17—Block 7
Lot 23 &
25—Block 7
Lot 26—Block 7
Lot 9—Block 8
Lot 19—Block 8

Filed Sept 2, 1931. R. W. Smith, Referee.

[Title of Court and Cause.]

MOTION TO STRIKE OUT REDUNDANT AND
IMPERTINENT MATTER FROM THE AN-
SWER OF MARGARET B. BARRINGER TO
THE ORDER TO SHOW CAUSE ON TRUS-
TEE'S PETITION TO MARSHAL LIENS
AND SELL.

COMES NOW GEORGE E. LILLEY, trustee in
bankruptcy of the estate of Windsor Square De-
velopment, Inc., a corporation, bankrupt, and moves

the court that an order be entered herein [479] requiring said Margaret B. Barringer to strike out the following portions of the answer of said Margaret B. Barringer, to the Order to Show Cause, heretofore filed herein, for the respective reasons hereinafter stated:

1. All of Paragraph III of said answer of said Margaret B. Barringer, on the ground that the allegations therein contained are redundant and impertinent, and not material to any of the issues herein.

2. That portion of Paragraph V of said answer of said Margaret B. Barringer filed herein as aforesaid, reading as follows:

“Defendant denies all and singular the allegations in said petition contained, save and except those hereinabove expressly denied or admitted,”

on the ground and for the reason that the same is redundant, and such pleading is contrary to the provisions of the Equity Rules.

3. That portion of the prayer contained in (or following) Paragraph V of said answer of said Margaret B. Barringer, reading as follows:

“And for an order directing the trustee to abandon all title to said property and to disclaim the same”

on the ground that the same is redundant for the reason that said relief prayed for is improper and not within any of the issues in this proceeding.

Dated this 23rd day of November, 1931.

THOMAS W. NEALON,

Attorney for George E. Lilley, Trustee in
bankruptcy of the estate of Windsor Square
Development, Inc., a corporation, Bank-
rupt.

Received copy of the within, this 23 day of Novem-
ber, 1931.

ELLINWOOD & ROSS,

Attorneys for

Margaret B. Barringer.

W. H. MACKAY.

Filed Nov. 23 1931. R. W. Smith, Referee. [480]

[Title of Court and Cause.]

ANSWER TO COUNTY OF MARICOPA AND
JOHN D. CALHOUN, AS TREASURER OF
MARICOPA COUNTY, AND TO TRUS-
TEE'S PETITION TO MARSHAL LIENS
AND SELL PROPERTY FREE AND
CLEAR OF INCUMBRANCES.

COMES NOW the County of Maricopa and John
D. Calhoun, the Treasurer of said County and by
its counsel, answers the Trustee's Petition to mar-
shal liens and sell property free and clear of in-
cumbrances as follows, to-wit:

Referring to Paragraph III page 6 of Trustee's
petition to marshal liens and sell property free and

clear of incumbrances in which the said trustee alleges the penalty upon the non-payment of back taxes, is in violation of the Constitution of the United States, the above named defendants specifically deny said allegation and put the trustee on strict proof of the same. The above named defendants admit each and every other allegation contained in said Trustee's petition to marshal liens, et cetera, which have any reference to the aforesaid defendants.

WHEREFORE these defendants pray that the claim or claims for taxes which have been heretofore filed, and a copy of which is hereto attached and made a part hereof, be allowed in the full amount and that the same be paid from the funds of the estate.

WALLACE W. CLARK,
Attorney, for County of Maricopa, and John D.
Calhoun, Treasurer.

In the District Court of the United States for the
Federal District of Arizona Division.

In Bankruptcy No. 570-Phx.

In the Matter of

Windsor Square Development, Inc.,
a corporation

Bankrupt.

State of Arizona,
County of Maricopa—ss.

PROOF OF UNSECURED DEBT WITH LET-
TER OF ATTORNEY. [481]

At Phoenix in the Federal District of Arizona on
the day of August 1931 came John D. Cal-
houn of Phoenix in the County of Maricopa in the
Federal district of Arizona and made oath

(1) That he is the Treasurer. of Maricopa
County of State of Arizona.

(2) That he is one of the partnership firm of
..... consisting of himself and
..... of

(3) That he is the treasurer of the
corporation incorporated by and under the laws of
the state of and carrying on business
at in the county of
and state of and that he is duly
authorized to make this proof, and to execute the
power of attorney hereinafter contained.

(4) The the said Windsor Square Dev. Inc., the
corporation for whom a petition for adjudication
of bankruptcy has been filed, was, at or before the

fling of said petition, and still is, justly and truly indebted to said County of Maricopa in the sum of **FOURTEEN HUNDRED SIXTY** and 92/100 Dollars (\$1,460.92).

(5) That the consideration of said debt is as follows: For Taxes due for the fiscal years 1929 and 1930, on real property previously owned by the Windsor Square Development, Inc., said real property now being a part of the above entitled bankrupt estate. A copy of said tax statements are hereto attached and made a part hereof.

(5a) That the date of maturity of said debt is past due.

(5b) That no note has been received nor judgment recovered therefor, (except.....)

(6) That no part of said debt has been paid (except..... [482])

(7) That there are no set-offs or counter claims to the same (except.....)

(8) That said creditor has not, nor has any person by order of said creditor, or to the knowledge or belief of said deponent for the use of said creditor, received any manner of security for said debt whatever (except the following which are the only securities held by said creditor for said debt that the aforesaid taxes are by statute declared to be a first and prior lien on the real property for which they are assessed and levied.

(9) That this deposition is not made by the claimant (nor if it has been hereinbefore stated to be a corporation by its treasurer) in person because and that deponent is duly authorized by his principal to make this deposition

and that it is within his knowledge that the debt hereinbefore mentioned was incurred as and for the consideration, and said creditor is constituted as herein above stated.

(10) LETTER OF ATTORNEY to Attorney-at-Law. You or any one of you are hereby authorized by said creditor by the person making the foregoing deposition, who is duly authorized thereto, to appear for and represent said creditor and vote for said creditor in any proceedings, or meetings, which may be had or called in the above entitled proceeding, in court, before the referee in bankruptcy or elsewhere, and particularly to vote for said creditor in the choice of a trustee of said bankrupt whenever such selection is held, to accept or in your discretion oppose confirmation of, any composition offered by or in behalf of said bankrupt, and to receive and receipt for any and all moneys which may be, or may become, payable to said creditor therein for or on account of said debt.

In witness whereof said creditor by its agent has hereunto signed its name and affixed its seal, when signing the deposition preceding, the 24th day of August, 1931. [483]

MARICOPA COUNTY (L. S.)

Individual executing ALWAYS sign here

By JOHN D. CALHOUN (L. S.)

John D. Calhoun, Treasurer.

Creditor

By

Individual executing ALWAYS sign here

Subscribed, sworn to and acknowledged before me this 24th day of August 1931 by the subscriber who (is personally known to me) or (has satisfactorily proved his identity).

[Notarial Seal] HENRY B. LEEZER,
Notary Public.

My commission expires May 1, 1934.

Received copy this 26th day of August, 1931.
Thomas W. Nealon, Attorney for Trustee.

Filed Aug. 26, 1931. R. W. Smith, Referee.

[Title of Court and Cause.]

ANSWER OF W. R. WELLS TO TRUSTEE'S
PETITION AND TO COURT'S ORDER TO
SHOW CAUSE.

COMES NOW, W. R. WELLS, by his attorneys, Messrs. Hayes, Stanford, Walton, Alee and Williams, and for answer to the petition of the trustee herein of the estate of the Windsor Square Development Inc., a corporation, Bankrupt, and to the order to show cause issued by the court thereon, and admits, denies and alleges as follows, to-wit:

I.

Alleges that Lot 2 in Block 1 in Windsor Square, according to the map of same recorded in Book 20 of Maps, at page 27, in the office of the County Recorder of Maricopa County, Arizona, set up in the trustee's petition, was sold to this answering de-

defendant by the Windsor Square Development Inc., through [484] its trustee, Phoenix Title and Trust Company; that thereafter a general warranty fee simple deed was executed and delivered by the said trustee to the said lot to this answering defendant and he is now the owner and in possession thereof.

II.

Further answering said petition, and for the information of the trustee and the court, he further alleges that he also purchased Lot 21 in Block 1 in said Windsor Square, to which lot a general warranty fee simple deed was executed to him and he is now the owner and in possession thereof. That Lots 1 and 20 in Block 1 in said Windsor Square, were purchased by him and are now in his possession under a contract with the Phoenix Title and Trust Company, as trustee; that the sales price on Lot 1, is \$600.00, on which he owes a balance as of July 15th, of \$167.02; that the purchase price on Lot 20, in Block 1, was \$1,094.00, on which he owes a balance of \$460.36, as of July 15th, 1931.

WHEREFORE, having fully answered herein, he prays that such order and decree may be entered in the above styled matter as will fully protect his rights as herein alleged; that no interest in said lots by way of lien or otherwise be adjudicated prior to his interest thereon; and for his costs herein expended and all proper relief.

HAYES, STANFORD, WALTON,

ALLEE & WILLIAMS,

Attorneys for W. R. Wells.

Copy hereof mailed to Geo. E. Lilley, Trustee,
this Aug. 31, 1931.

MATT S. WALTON of counsel.

Filed Aug. 31, 1931. R. W. Smith, Referee.

[Title of Court and Cause.]

ANSWER OF J. ALLEN WELLS TO TRUS-
TEE'S PETITION AND TO COURT'S
ORDER TO SHOW CAUSE. [485]

State of Arizona

County of Maricopa—ss.

J. ALLEN WELLS, being first duly sworn, on oath
deposes and says:

That on the 10th day of March, 1930, he purchased
from the Windsor Square Development Co., Inc.,
Lot 22 of Block 3 of Windsor Square, as per map
or plat of said Windsor Square recorded in the
office of the County Recorder of Maricopa County,
Arizona; that the purchase price of said lot was
the sum of \$975.00, payable \$250.00 down and \$25.00
per month, including interest; interest on deferred
payments to be 8% per annum; That he has paid
the sum of \$733.49 on said lot, including interest,
and that he fully intends to complete the payments
due on said lot as and when they fall due. See Trust
#418-85A, c/o Phoenix Title and Trust Co.

J. ALLEN WELLS.

Subscribed and sworn to before me this 1 day of
September, 1931.

[Seal]

J. B. FRANCIS,

Notary Public.

My commission expires May 11, 1933.

Filed Sept 2, 1931. R. W. Smith, Referee.

[Title of Court and Cause.]

ANSWER OF DEFENDANT RAYMOND
L. NIER.

RAYMOND L. NIER, one of the defendants here-
in, for his answer, hereby alleges:

That on or about the 25th day of February, 1930,
he purchased by sales agreement, Lot No. 16, Block
1, Windsor Square, according to the map, or plat,
of said Windsor Square on file and [486] of record
in the office of the County Recorder of Maricopa
County, Arizona, in Book 20 of Maps at page 37,
for the sum of Thirteen Hundred Dollars (\$1300.00),
payable One Hundred Ninety (\$190) Dollars in
cash, and monthly installments of Twenty-six (\$26)
Dollars; that he has paid the sum of Three Hun-
dred Twenty-eight Dollars and Twenty-four Cents
(\$328.24) on the said agreement since that time;
that the said defendant claims a lien on said lot in
the amount of Three Hundred Twenty-eight Dollars
and Twenty-four Cents (\$328.24).

WHEREFORE, Defendant Raymond L. Nier
prays to the Court for an order impressing the said

lot with the lien in the sum of Three Hundred Twenty-eight Dollars and Twenty-four Cents (\$328.24).

District of Arizona
State of Arizona
County of Gila—ss.

RAYMOND L. NIER, being duly sworn, deposes and says that he is one of the defendants named in the above entitled action; that he has read the foregoing Answer and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

RAYMOND L. NIER.

Subscribed and sworn to before me this 31st day of August, 1931.

[Notarial Seal]

W. B. NASH,
Notary Public.

My commission expires March 17, 1934.

Filed Sept. 2, 1931. R. W. Smith, Referee. [487]

[Court and Cause.]

Comes now the Salt River Valley Water Users' Association, a corporation, and answers the order to show cause of trustee's petition to marshal liens and sell free and clear of encumbrances, issued by

the Honorable R. W. Smith, Referee in Bankruptcy, and published in the Arizona Weekly Gazette on June 27th, July 4th, July 11th and July 18th, 1931, as follows, to-wit:

Said Salt River Valley Water Users' Association respectfully shows that long prior to the dates when the respective interests of any of the parties to the above entitled proceeding in the property described in the petition of the trustee in bankruptcy above referred to became vested or were initiated, the then owner of a tract of irrigable land, including all of the lots and blocks described in the said petition, subscribed for shares of stock in the said Salt River Valley Water Users' Association, and by subscribing for said shares of stock, irrevocably bound and obligated said land to said Salt River Valley Water Users' Association, and specifically agreed that there might be imposed on said land in accordance with the Articles of Incorporation, By-Laws, and rules and regulations of said Association, assessments against said land, which assessments when made should become a lien upon said lands.

That the following is a copy of Article XIII of the Articles of Incorporation of said Salt River Valley Water Users' Association, which set forth the power and authority of said Association to levy said assessments, and to which the owner of said land subscribing for shares of stock in said Association specifically obligated his said lands, to-wit:

“ARTICLE XIII.

(As Amended August 21, 1917)

Section 1. Revenues necessary for the accomplishment of the purposes of this Association shall be derived: [488]

First: From income arising from the sale, lease, or otherwise furnishing electric or other power or power privileges and from the delivery of water for irrigation;

Second: From assessments, so far as they may be from time to time necessary, of the cost of construction, improvement, enlargement, betterment, repairs, operation and maintenance of the irrigation and other works of the Association, or of those under its management, operation and maintenance.

Section 2. The Council shall have power to make and enforce necessary by-laws for the making, levying and collecting and enforcement of assessments and charges for service.

Section 3. The Board of Governors shall, at its regular meeting in May of each year, or at such other time annually as may be fixed by by-laws, estimate the probable cost of the operation, maintenance, repair, enlargement and betterment of the works of the Association and those under its management, care and operation, for the year beginning on the first day of the next ensuing October, including therein any deficit otherwise unprovided for, and the amount probably necessary to pay the Govern-

ment the annual installment of the construction cost of the Salt River project, assumed by the Association. It shall also at the same time estimate the probable net income of the Association from all sources, other than that which may be derived from the service of water to its shareholders, if any.

From such estimated cost there shall be deducted the estimated net income, and upon this difference shall be computed the charge to be made to shareholders for the service of irrigating water for the year beginning on the first day of October next ensuing. Such charge shall be based upon the service of each acre foot as the unit of measurement. A minimum charge shall be made against every acre to which stock is appurtenant of a charge, as for the use of, two acre feet, whether used or not by the owner.

The Board may graduate the charge to be made per acre foot of water delivered, increasing the charge per acre foot with the use of each acre foot in excess of two acre feet used by the owner.

The price to be charged per acre foot of water to be served, shall be fixed as nearly as that can be practically done so that the aggregate receipts from that source shall equal, with other amounts applicable thereto, the cost of operation, maintenance and repair for the year for which such charge is fixed.

Charges for service of water shall be paid in advance of its delivery. [489]

No water shall be delivered in any year beyond the year in which the contract was made for water.

As funds will be necessary for the operation and maintenance of the irrigation works, and to pay the first installment of the cost of construction, upon the taking over by the Association of the project, before the regular annual assessment as above provided can be made, the Board of Governors are directed, as soon as convenient after the execution of the contract with the Government relative to the taking over of, care, operation and maintenance of the project, make the necessary assessment of the funds so needed in the manner now prescribed by the by-laws, so far as they are applicable, but without the preliminary notices therein prescribed.

The by-laws of the Association relating to assessments, so far as they are applicable and not inconsistent with these articles, shall be and remain in force until otherwise provided by the Council.

Section 4. Assessments for funds with which to pay the United States Government for the cost of the construction and acquisition of the works commonly known as the Salt River Project shall be made against the owners of stock, as the same may be needed therefor. Such

assessments shall each be equal against each share of said stock and the land to which it is appurtenant.

Section 5. Assessments for expenditures for purposes that are of benefit to a part only of the shareholders may be specially assessed in proportion to such benefits against such shareholders, but no expenditure to be provided for, or covered by, such special assessment shall be made, or obligation to expend the same incurred, except upon the petition of the holders of two-thirds of the shares to be so specially benefited thereby.

Section 6. Assessments shall become, from time to time as they are made and levied, and, until they are paid or otherwise discharged, shall be and remain a lien on the lands of the shareholders against which they are levied, and upon the shares of stock appurtenant to said lands, and all rights and interests represented by such shares. The manner of fixing the lien and enforcing the same shall be prescribed in the by-laws. In addition to any such provision, the Association may enforce the payment of assessments by suit therefor in a court of competent jurisdiction.

Section 7. Assessments and charges may be so made as to maintain in each year a fund in the treasury, not to exceed One Hundred Thousand Dollars (\$100,000.00) with which to meet the cost of unexpected damage or injury by flood or otherwise to the project. [490]

Section 8. Except for the ordinary operation, maintenance and repair, no work shall be undertaken, purchase made or indebtedness incurred or be authorized during any one year whereof the cost or amount thereof shall exceed One Hundred Thousand Dollars (\$100,000.00), until it shall have first been ratified by at least a majority of the votes cast at an annual election or at an election to be called for that purpose. Special elections may be called and held for such purpose under such by-laws as the Council may prescribe, not inconsistent with these Articles.

Section 9. The Board of Governors shall each year fix the charge to be paid for the delivery of water to the lands, the owners of which are not shareholders of the Association.

In addition to the charges fixed for the delivery of water to shareholders who are served with gravity water only, the Board of Governors shall each year fix an additional charge to meet the additional cost of service of other than gravity water, provided that no lift charge shall hereafter be required from lands under the Highline Canal as now constructed. (As amended April 3, 1923.)

Section 10. The regular assessments and water charges of the Association shall entitle each landowner to have the irrigation water to which his land is entitled delivered to him at the high point of the quarter section or other

substantially equivalent service unit established by the Association, and it shall be the duty of the shareholder to provide his own means to convey said water to his land from proper points on project ditches now operated by the Association, provided, that whenever any quarter section or other service *until* shall be divided into so many ownerships, or there shall be such failure to provide and maintain proper ditches for the carriage of water within the limits of said quarter section or other service unit, or there shall be such lack of co-operation among the several owners in said quarter section or other service unit as to result in a condition making impracticable the proper distribution of water within such service unit, or causing unnecessary loss or waste of water, or causing flooding of lands or constituting a hindrance to the operation of Association ditches, the Association under such rules and regulations as may be prescribed by the by-laws, may acquire, operate and/or maintain temporarily or permanently, any or all irrigation and/or waste ditches or parts thereof, in such quarter section or other service unit, and may undertake the service of water to any or all individual tracts within such quarter section or other service unit.

The acquiring of the aforesaid ditches, and/or maintaining them, and distributing water within the limits of such quarter section or other serv-

ice unit, shall be deemed to be for purposes that are of benefit only to the shareholders served thereby within said quarter section or other service unit, and the cost thereof shall be equitably [491] divided and/or apportioned among such lands and the owners thereof as may be provided by the by-laws of the Association. The estimated amount of such cost as divided and apportioned under the by-laws, shall be added by the Association to the several assessments levied on the lands within such quarter section or other service unit, and/or to the rate charged said lands for water in excess of two acre feet per annum, and shall be collected as other assessments and excess water charges are collected. (Adopted April 3, 1928.)”

That in pursuance of the authority vested in it by its Articles of Incorporation, the said Salt River Valley Water Users' Association has caused to be levied and recorded in the office of the County Recorder of Maricopa County, Arizona, assessments to secure the payment of principal and interest upon bond issues of said Association, which bond issues are for the following amounts, to-wit:

Mormon Flat Bond issue,	\$1,800,000.00
Horse-Mesa Bond issue,	\$2,500,000.00
Stewart Mountain Bond issue,	\$4,400,000.00
Refunding Bond issue,	\$3,000,000.00

and that in addition to the above, the owner of said lands at the time he subscribed for stock in said

Salt River Valley Water Users' Association, also filed an instrument in writing known as a Water Application, by which he secured for said lands the right to water from the Salt River Arizona Reclamation Project, and obligated his said lands to pay their pro rata part of the construction costs of the Salt River Valley Project, and that a considerable portion of said construction costs still remain unpaid.

That the amount for which said lands are obligated to the United States of America under said water application, and under the assessment for said Mormon Flat Bonds, said Horse Mesa bonds, said Stewart Mountain bonds, and said Refunding bonds, is not set forth herein for the reason that said Salt River Valley Water Users' Association has no control over the assessments for said purposes, and that in order to legally fix and determine the [492] amount said lands are obligated to pay to the United States and for said bond issues, it is necessary that the United States of America and the trustees under the respective bond issues be made parties to this proceeding. That none of the payments due to the United States, and none of the payments due on principal or interest on any of said bond issues which remain unpaid are due at the present time. That all past due payments to the United States, and all past due payments on said bond issues have been fully paid by said Salt River Valley Water Users' Association. That said Salt River Valley Water Users' Association, under

agreements with the United States of America, and with the trustees and holders of bonds of said bond issues, is obligated and bound to make all of said payments as they become due, and if financially able to do so, will make said payments.

That under its Articles of Incorporation, and particularly Article XIII thereof, as above set forth, the said Salt River Valley Water Users' Association will in the future continue to levy assessments upon the lands described in the aforesaid trustee's petition, as such assessments may become necessary for the purposes of said Salt River Valley Water Users' Association.

That there have been heretofore levied against the following described lots in the said Windsor Square Subdivision, assessments by said Salt River Valley Water Users' Association which are delinquent and remain unpaid. That the lots in said Windsor Square Subdivision against which there are at the present time delinquent unpaid assessments, are the following lots:

Block 1—Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 18 and 19.

Block 2—Lots 3, 4, 5, 6, 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 31, 32, 33, 34, 36, 38, 40, 41, 42. [493]

Block 3—Lots 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38.

Block 4—Lots 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 25, 26, 27 and 28.

Block 5—Lots 3, 5, 6, 9, 11, 13, 15, 16, 17, 19, 22 and 23.

Block 6—Lots 1, 3, 4, 5, 7, 8, 9, 10.

Block 7—Lots 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 19, 21, 27, 29, 31, 33, 34, 35, 37 and 38.

Block 8—Lots 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 17, 18, 20, 22, 23, 27, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45.

Block 9—Lots 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 27, and 28.

And roads in Windsor Square, Section 17, Township 2 North, Range 3 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona.

That the assessments of said Salt River Valley Water Users' Association against the above lots were levied and assessed as a unit, and not separately against each lot, for the reason that at the time when said lots were levied and assessed all of said lots were in common ownership, and that the amount of said assessments and the penalties thereon, if paid on or prior to the 6th day of September, 1931, are as follows:

Season 1929-30, \$2.00 per acre. Assessment, \$106.00. Penalty, \$18.02. Total, \$124.02

Season 1930-31, \$4.00 per acre. Assessment, \$212.00. Penalty, \$23.32. Total, \$235.32

Total delinquency up to September 6,
1931 \$359.34

That for each month after September 6th, 1931, the above amounts remain unpaid, a penalty of one per

cent per month on the amount of principal delinquent is added. [494]

That an assessment of \$3.40 per acre in addition to the above has been levied due September 6th, 1931, delinquent October 6th, 1931, on account of the irrigation season 1931-32, and a further assessment will be payable each six months thereafter on such amount as the needs of the said Salt River Valley Water Users' Association may require.

That it is not within the power of said Salt River Valley Water Users' Association to consent to a sale, free and clear of the lien of the United States for construction charges, or the lien vested in the various trustees under the various bond issues to secure future payments, nor is it within the power of said Salt River Valley Water Users' Association to consent to a release of the obligation of said lands for future assessments and payments to said Salt River Valley Water Users' Association. That as to the past due and delinquent assessments, and as to the assessments becoming due and payable on September 6th, 1931, and delinquent October 6th, 1931, said Association is willing that said lands may be sold free and clear of said liens upon condition that there be impounded from the sale of said lands a sum sufficient to pay the Association the amounts due, together with the penalties thereon. That said lien of the Association for said amounts is prior and superior to all other liens and claims against said lands, excepting only any liens or claims due to the United States of America and the lien of the State of Arizona for taxes.

WHEREFORE, said Salt River Valley Water Users' Association prays that an order be made and entered herein to establish the rights of said Association as hereinabove set forth, and make such other provision relating thereto as may be right and proper.

KIBBEY, BENNETT, GUST, SMITH
& ROSENFELD

Attorneys for Salt River Valley Water
Users' Association. [495]

State of Arizona,
County of Maricopa—ss.

J. L. GUST being first duly sworn on oath deposes and says:

That he is the legal advisor of the Salt River Valley Water Users' Association, the corporation that has made the above and foregoing answer to order to show cause, and makes this affidavit for and on behalf of said corporation;

That affiant has read the said answer, and that the matters and things therein stated are true to the best of his knowledge and belief.

J. L. GUST

Subscribed and sworn to before me this 2nd day of September, 1931.

[Seal]

ETHOL FROST

Notary Public.

My commission expires Feb. 28, 1932.

Filed Sept. 2, 1931. R. W. Smith, Referee.

[Court and Cause.]

APPEARANCE OF E. L. GROSE IN CON-
FORMITY WITH ORDER OF TRUSTEE
IN BANKRUPTCY.

Comes now E. L. GROSE, one of the respondents named in the above named and numbered proceeding, and in obedience to the order of the trustee in bankruptcy, alleges:

That on the 20th day of March, 1929, this respondent together with his wife, MAUDE M. GROSE, entered into a certain [496] written contract with the PHOENIX TITLE AND TRUST COMPANY, as trustee, wherein E. L. GROSE as purchaser bought from the PHOENIX TITLE AND TRUST COMPANY as trustee and seller the following described real property upon the terms and conditions in said contract recited.

Lot 1, Block 4 of Windsor Square according to the map and plat of said Windsor Square on file and of record in the office of the County Recorder of Maricopa County, Arizona, in Book 20 of Maps at page 37 thereof.

That the total purchase price of said real property, as recited in contract, was the sum of One Thousand Seven Hundred Seventy-five and no/100 Dollars, of which there was paid at the time of the execution of said contract the sum of Three Hundred Fifty-five Dollars, receipt of which was acknowledged in said contract, and it was provided in said contract that the balance of said purchase price, to wit, the sum of One Thousand Four Hundred Twenty Dol-

lars, was to be paid in monthly installments of Thirty-five and 50/100 Dollars each, beginning with April 20th, 1929, and continuing thereafter until the total balance thereof was paid.

This respondent alleges that said payments were by him made, as provided in said contract, up to and including the month of September, 1930; that since said date respondent has made no further payments under said contract; that at the time respondent ceased making payments on said contract he had paid eighteen installments thereof at Thirty-five and 50/100 Dollars each, aggregating the total sum of Six Hundred Thirty-nine Dollars.

That on the 9th day of October, 1929, this answering respondent together with his wife, MAUDE M. GROSE, entered into a certain written contract with the PHOENIX TITLE AND TRUST COMPANY as trustee, wherein E. L. GROSE as purchaser bought from the PHOENIX TITLE AND TRUST COMPANY as trustee and seller the following [497] described real property upon the terms and conditions in said contract recited,

Lot 2, Block 4 of Windsor Square according to the map and plat of said Windsor Square on file and of record in the office of the County Recorder of Maricopa County, Arizona, in Book 20 of Maps at page 37 thereof.

That the total purchase price of said real property, as recited in said contract, was the sum of One Thousand Six Hundred Seventy-five Dollars, of which there was paid at the time of the execution of said contract the sum of Three Hundred Thirty-

five Dollars, receipt of which was acknowledged in said contract, and it was provided in said contract that the balance of said purchase price, to-wit, the sum of One Thousand Three Hundred Forty Dollars, was to be paid in monthly installments of Thirty-five and 50/100 Dollars each, beginning on the 1st day of November, 1929, and continuing thereafter until the total balance thereof was paid.

This respondent alleges that said payments were by him made, as provided in said contract, up to and including the month of September, 1930; that since said date respondent has made no further payments under said contract; that at the time respondent ceased making payments on said contract he had paid eleven installments thereof at thirty-five and 50/100 Dollars each, aggregating the total sum of Three Hundred Ninety and 50/100 Dollars.

Respondent alleges that the two parcels of land hereinbefore particularly described were parts of a larger tract of land known and designated as Lots

Lots 1 to 10 and Lots 12 to 18 of Colter Tract, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 6 of Maps at page 35 thereof.

That prior to the 9th day of January, 1929, one MARGARET B. BARRINGER was the owner in fee of the said lands herein described [498] and said MARGARET B. BARRINGER by sufficient deed of conveyance conveyed said lands to PHOENIX TITLE AND TRUST COMPANY and there-

after and on the 9th day of January, 1929, the said PHOENIX TITLE AND TRUST COMPANY executed its declaration of trust, wherein and whereby the lands hereinbefore described were declared to be held in trust to THOMAS J. TUNNEY as beneficiary and that said lands were so held in trust under the terms and conditions set forth in said declaration of trust.

That thereafter, to wit, on the 11th day of January, 1929, THOMAS J. TUNNEY, beneficiary as hereinbefore set forth, by an assignment duly executed, sold, assigned, transferred and set over to one L. D. OWENS, JR., husband of MARY MARGARET OWENS, and H. C. DINMORE, husband of ESTELLE DINMORE, and S. W. MILLS, husband of DOROTHY MILLS, all his rights, powers and privileges granted and reserved by that said declaration of trust executed by PHOENIX TITLE AND TRUST COMPANY, as hereinbefore set forth, and embracing the lands hereinbefore particularly described: that thereafter by assignments from the assignees, hereinbefore mentioned, all right in and to the declaration of trust hereinbefore set out was assigned to various parties and that the bankrupt herein, to wit, WINDSOR DEVELOPMENT, INC., a corporation, became and is now the assignee of all the rights, titles and privileges of the original beneficiary under the declaration of trust hereinbefore set forth.

That prior to the execution of the contract of March 20th, 1929, and prior to the execution of the contract of October 9th, 1929, the firm of OWENS-

DINMORE, a partnership composed of L. D. OWENS, JR., and H. C. DINMORE, was appointed the exclusive selling agents of the lands set forth in said trust for and on behalf of the beneficiaries under said trust and that as such exclusive selling agent they did solicit the respondent E. L. GROSE [499] for the purpose of inducing said E. L. GROSE to become a purchaser of one or more of the lots in said tract, hereinbefore described, and that as an inducement for the purchase of the lots hereinbefore described, did represent to the said E. L. GROSE that a certain building and improvement program was contemplated by the beneficiaries under said trust and that as part of said program there was proposed that certain street improvements would be provided, including the pavement in front of the lots hereinbefore described and also the pavement of Colter Avenue, adjacent thereto; that in addition to the pavement hereinbefore mentioned, it was represented by said selling agents that there would be maintained necessary electric lights for the purpose of street lighting; that the streets in said tract would be maintained in a clean and proper manner; that the weeds would be cut down on the unimproved lots; that the main park and fountain in the center of said Square would be properly maintained and it was further represented that the said tract would be devoted and dedicated to an exclusive and attractive residential section and as such would be developed.

That this respondent in reliance upon said representations entered into the contracts for the pur-

chase of the lots hereinbefore described and in reliance thereon maintained the payments as provided for in said contract; that the beneficiaries under said trust deed and the selling agents for said beneficiaries under said trust deed have totally failed and neglected to do the street paving as represented as an inducement to said contract and have failed to maintain proper street lighting facilities and have failed to keep the weeds cut down on the unimproved lots in said subdivision and have failed to maintain the park and fountain in the center of said Windsor Square, all in breach and in violation of the representations made by the beneficiaries and their selling [500] agents under said declaration of trust and in violation of the rights of this respondent under the said contracts of purchase.

That on the.....day of....., upon the petition of the beneficiaries under said trust deed in the above entitled Court, this Court appointed a trustee in bankruptcy for the tract of land hereinbefore described in said declaration of trust, which said tract of land has been named and now is known as WINDSOR SQUARE DEVELOPMENT, INC.

That because of the failure of the beneficiaries and their selling agents to provide the improvements and services hereinbefore set forth and because of the petition in bankruptcy hereinbefore set forth in this Court, this respondent has failed to make any further payments upon his contracts; that

because of the failure on the part of the beneficiaries, hereinbefore named, to carry out the representations and promises made relative to the said paving and to the installation of proper lighting facilities and the clearing of the lands from weeds and the maintenance of the fountain and park, as hereinbefore set forth, the value of the lots contracted to be bought by this respondent has been reduced to a sum less than the amount that respondent has already paid on said contracts, which amount is One Thousand Seven Hundred Nineteen and 50/100 Dollars.

WHEREFORE, this respondent prays that the PHOENIX TITLE AND TRUST COMPANY be required to execute and deliver to respondent its warranty deed conveying good and sufficient title to the premises hereinbefore described, free and clear from all liens of every character.

CUNNINGHAM, CARSON & GIBBONS,
Attys for Responds. [501]

State of Arizona
County of Maricopa—ss.

E. L. Grose being first duly sworn, upon his oath deposes and says:

That he is the respondent named in the foregoing answer and appearance and that he has read the same and knows the contents thereof, and that the matters and things therein alleged are true of his own knowledge, except as to those matters therein alleged upon information and belief, and as to those, he believes them to be true.

Subscribed and sworn to before me this 31 day of August, 1931.

[Seal]

OLIVE A. RAUCH,

Notary Public.

My commission expires 9/15/31.

Filed Sept. 2, 1931. R. W. Smith, Referee.

[Title of Court and Cause.]

ORDER AND DECREE FIXING AND MARSHALLING LIENS, DETERMINING PRIORITY THEREOF AND ADJUDGING CERTAIN ASSERTED LIENS, AND INTERESTS NULL AND VOID.

THIS CAUSE having come on for hearing on the 25th day of November, 1931, upon the petition of George E. Lilley, Trustee in Bankruptcy of the above entitled estate to marshal liens and sell property free and clear of encumbrances, and upon the answers and appearances of alleged lienholders; Thomas W. Nealon and Alice M. Birdsall appearing as attorneys for said Trustee in Bankruptcy in support of said petition; John L. Gust, Esq., appearing as [502] attorney for respondent, Phoenix Title & Trust Company, as well as for the Salt River Valley Water Users' Association; W. H. MacKay, Esq., appearing as attorney for respondent, Margaret B. Barringer; Gene Cunningham, Esq., appearing as attorney for respondent, E. L. Grose; Matt Walton,

Esq., appearing as attorney for respondent W. R. Wells; W. W. Clark, Esq., appearing as attorney for respondent, County of Maricopa, State of Arizona, Mitt Sims, State Treasurer and John D. Calhoun, County Treasurer; and respondents, Raymond L. Nier and J. Allen Wells, although having filed their answers herein, not being present or represented by counsel;

THEREUPON the motion of the Trustee in Bankruptcy to strike from the answer of respondent, Margaret B. Barringer, certain matter as redundant and impertinent, and the motion of the Trustee in Bankruptcy to strike from the amended answer of respondent, Phoenix Title & Trust Company certain matter as redundant and impertinent, were heard, and said motions were granted, with leave to each of said respondents to amend said pleadings within ten days from said date.

THEREUPON evidence was introduced on behalf of said various respondents in support of their respective pleadings filed herein, and by said Trustee in Bankruptcy in support of said petition; said hearings being continued from day to day, and the said evidence being concluded upon the 18th day of December, 1931, upon which date it was stipulated in open court that the matter would be submitted upon briefs, the case to be deemed submitted at the end of ten days after the filing of the answering brief of the Trustee in Bankruptcy, and said answering brief of the said Trustee in Bankruptcy having been filed herein on the 10th day of March, 1932, said

cause was on the 21st day of March, 1932, submitted for determination; [503]

NOW, after due consideration, upon the pleadings and the evidence, I do find the following facts:

I.

That Windsor Square is a subdivision in the County of Maricopa, State of Arizona, and comprises all the property described in the petition to marshal liens and sell of George E. Lilley, Trustee, herein, as well as other lots not included in said petition of said Trustee.

II.

That on the 6th day of June, 1931, George E. Lilley, Trustee in Bankruptcy of the above entitled estate, filed herein his petition to marshal liens and sell free and clear of encumbrances, the following described property:

(Here follows identical schedule of blocks and lots listed in Trustee's Petition to Marshal Liens and Sell Property Free and Clear of Encumbrances, which appears ante page 170).

That thereafter and on the 18th day of June, 1931, at a duly called meeting of creditors to consider said petition, of which meeting due notice was given to all creditors, including Margaret B. Barringer, and no adverse interest appearing at said meeting, an order of sale of said property was made, from which order of sale no review has been taken; that personal service of said order of sale was made on

the attorney for Margaret B. Barringer on June 30, 1931; that order to show cause requiring each of the parties defendant named in said petition to appear and set up their rights, if any, in and to said premises, on or before the 2nd day of September, 1931, was duly made on the 18th day of June, 1931, and service of said order to show cause was thereafter duly made upon each and every one of the defendants [504] named in said petition of said Trustee in Bankruptcy.

That answers to said order to show cause and said petition of said Trustee in Bankruptcy were within the time required in said order to show cause, filed by Margaret B. Barringer, Phoenix Title and Trust Company, a corporation, Salt River Valley Water Users' Association, a corporation, E. L. Grose, W. R. Wells, County of Maricopa, State of Arizona, Mitt Sims, State Treasurer, John D. Calhoun, County Treasurer, Raymond L. Nier and J. Allen Wells.

That by stipulation of counsel for Central Arizona Light & Power Company, a corporation, and counsel for the Trustee in Bankruptcy, George E. Lilley, it was agreed that without formal appearance of said corporation in this proceeding the rights of said Central Arizona Light and Power Company in said premises might be determined in this proceeding to be for easements over streets, alleys and lands of Windsor Square Subdivision, as shown in the recorded plat of Windsor Square and other agree-

ments for easements over said premises, all of record in the office of the Recorder of Maricopa County, Arizona.

That the respondents, Glen E. Weaver, E. R. Foutz, Lucille Nichols, Nellie B. Wilkinson, Susie M. Wallace and Thomas J. Tunney filed no answer and made no appearance in answer to said order to show cause, and default was duly entered against them; that said Tunney has no interest in or lien upon any part of said property.

III.

That prior to the filing of the petition in bankruptcy herein, and at the time of the filing of said petition in bankruptcy, on the 25th day of October, 1930, all of the property described in the petition of George E. Lilley, Trustee in [505] Bankruptcy herein, to marshal liens, was in the possession of said bankrupt, and that said property was scheduled by said bankrupt in its amended schedules filed in said bankruptcy proceedings on the 12th day of December, 1930.

IV.

That George E. Lilley is the duly elected, qualified, and acting Trustee in Bankruptcy of the above entitled bankrupt estate, and has been since the 15th day of November, 1930.

V.

That immediately upon qualifying as such Trustee of said bankrupt estate, said George E. Lilley

took possession of said property described in said petition, and ever since has had, and now has possession of said property.

VI.

That on the 12th day of January, 1931, Walter Martin, Eben Lane and L. R. Bailey, the appraisers regularly appointed by this Court returned into said Court their inventory and appraisal of the property described in the Trustee's petition herein and fixed the value of said property at the sum of \$135,232.11, and that said sum of \$135,232.11 was then and is now the fair and reasonable value of said property.

VII.

That by a transaction which was consummated on or about the 14th day of January, 1929, L. D. Owens, Jr., H. C. Dinmore and S. W. Mills, all married men, purchased the property subsequently platted as Windsor Square, which included the property described in the petition of the Trustee in Bankruptcy [506] herein, together with other property not included in said petition, for the price of \$105,000.00, paying the consideration for said property by the payment of Twenty Thousand Dollars (\$20,000.00) in cash, and the assumption of the payment of a note in the sum of Eighty-five Thousand Dollars (\$85,000.00) executed by Thomas J. Tunney on December 20, 1928, payable to Margaret B. Barringer, and that immediately upon the con-

summation of said transaction, said purchasers went into possession of the property described in Trustee's petition and commenced improving the same.

VIII.

That said Thomas J. Tunney, who on December 20, 1928, executed a note for Eighty-five Thousand Dollars (\$85,000.00) to Margaret B. Barringer, and which note for Eighty-five Thousand Dollars (\$85,000.00) is set up by said Margaret B. Barringer in her pleadings in this proceeding as the basis of a claim of lien by her on the property described in Trustee's petition, at no time has had and has not now any interest, either legal or equitable, in the property involved in these proceedings; that said Thomas J. Tunney, on December 20, 1928, was and at the present time, is an employe of the Phoenix Title and Trust Company, and acted as a "dummy" in the above transaction, for a consideration of Twenty Dollars (\$20.00) paid to him; that said Tunney at no time held written authorization from any parties to act in their behalf.

IX.

That all the rights and interest of said purchasers, Owens, Dinmore and Mills, and of their respective wives, in the property described in the petition of the Trustee herein, were, before the filing of the petition in bankruptcy herein, transferred to the bankrupt. [507]

X.

That the claims of various creditors filed in these proceedings for indebtedness incurred by the prede-

cessors of the bankrupt in connection with the improvement of Windsor Square, were assumed by the bankrupt prior to the filing of the petition in bankruptcy herein.

XI.

That the bankrupt, and its predecessors in interest namely, said Owens, Dinmore and Mills, spent in actual improvements upon the property known as Windsor Square, and which embraced all of the property described in the petition of the Trustee in Bankruptcy herein, said improvements consisting, among other things, of grading, paving, curbing, planting of trees, shrubbery and installing an electric lighting system and a water system, a sum in excess of Ninety Thousand Dollars (\$90,000.00); that there have been filed and allowed in said bankrupt estate claims of unsecured creditors for amounts still due them for improvements so made upon the property known as Windsor Square, aggregating an amount in excess of One Thousand Dollars (\$1,000.00).

XII.

That the respondents, Margaret B. Barringer and Phoenix Title and Trust Company permitted the bankrupt and its predecessors in interest to exercise dominion over, retain possession of, and hold themselves out to the public in general and numerous creditors in particular, as the owners of, the property known as Windsor Square and which embraced all of the property described in the petition of the Trustee in Bankruptcy herein, and that in reliance thereon credit was extended to the bankrupt and its predecessors in interest by said

have been filed and allowed in the bankruptcy proceedings. [508]

XIII.

That the only liens existing against the property described in the petition of the Trustee in Bankruptcy herein, and their respective order and amounts, and the conditions of each of same, and the only interests of the various other respondents in said property, and the only claims against the proceeds thereof are specifically set forth as follows:

First: That there are unpaid taxes due upon the lands described herein amounting to the sum of One Thousand Four Hundred Ten Dollars and Forty-six cents (\$1,410.46), and a tax lien for said amount against the premises described in the petition of the Trustee in Bankruptcy herein exists in favor of the State of Arizona and County of Maricopa.

Second: That the Salt River Valley Water Users' Association is a corporation, duly organized under the laws of Arizona, for the purpose of handling matters connected with the distribution of water under the Salt River Valley Project, the lands described herein being within said project and dealing with the United States Government in respect to the amounts due thereon for the construction of the Roosevelt Dam and Reservoir, and all other matters connected with the irrigation of lands under the Salt River Valley Project, and fixing and

levying the assessments due the Government for the construction thereof, and for fixing and collecting all sums due by the owners of lands within that project for the distribution of water therein; that long prior to the date of these proceedings, the then owner of the land which included all the lands described in the petition of the Trustee in Bankruptcy herein, subscribed for shares of stock in the Salt River Valley Water Users' Association, and by so subscribing bound and obligated said land to said Salt River [509] Valley Water Users' Association and agreed that assessments might be levied which should be a lien on said lands; that by virtue thereof the said Salt River Valley Water Users' Association holds a lien upon the premises described herein for said assessments and for unpaid water rents and assessments, which amounted on the 6th day of September, 1931, to the sum of Three Hundred Fifty-Nine Dollars and Thirty-Four Cents (\$359.34); together with such additional sums and penalties as have accrued thereon since September 6, 1931, all of which sums are secured by a lien on the lands herein described; and that said lands are obligated and a lien exists upon same for future assessments and water rents to said Salt River Valley Water Users' Association.

Third: That the Central Arizona Light & Power Company is a public utility corporation and as such distributes electric light and power upon the premises described herein, and for such purposes

has certain easements over streets, alleys and lands within Windsor Square, all of which more fully appears by the recorded plat of Windsor Square in Book 20 of Maps, page 37, Maricopa County Records, and by subsequent agreements relating thereto, said subsequent agreements being recorded respectively in Book 40 of Miscellaneous Records at page 54 thereof, and in Book 41 of Miscellaneous Records at page 211 thereof, Maricopa County Records, and said easements rights as stated therein are hereby confirmed and recognized and the sale of said property shall be made subject to the easement rights as set forth in said Map and said recorded agreements.

Fourth: That Margaret B. Barringer advanced certain sums of money, amounting in the aggregate to the sum of One Thousand Nine Hundred Fifty-Seven and 93/100 Dollars (\$1,957.93) for the payment of taxes and for the preservation of said property, [510] said amounts being advanced prior to the adjudication in bankruptcy herein, and she is entitled to repayment of said sum of One Thousand Nine Hundred Fifty-Seven and 93/100 (\$1,957.93) Dollars; and upon the sale of said property free and clear of liens as heretofore ordered by this Court, her claim for repayment of said amount should be transferred to the proceeds thereof, subsequent and inferior, however, to the liens hereinabove found and determined.

Fifth: That E. L. Grose and Maude M. Grose, his wife, were purchasers under contract of sale of Lot 1, Block 4 of Windsor Square, for the total

purchase price of \$1,775.00, upon which they have paid the sum of \$989.00; and of Lot 2, Block 4 of Windsor Square, for the total purchase price of \$1,675.00, upon which they have paid the sum of \$725.50.

That said lots are a part of the property described in the petition of the Trustee in Bankruptcy herein, and that said contracts of purchase were entered into and said payments made thereupon, relying upon the representations made by the owners of said property that certain improvements consisting of paving in front of said property, installing lights in said subdivisions and installation of a fountain in a park in said subdivision would be made and completed; that said improvements were not completed and that by reason of said failure to make said improvements the value of said lots was decreased; that the value of said Lot One (1), Block Four (4) of said Windsor Square by reason of said failure to make said improvements as agreed upon is not in excess of the sum already paid therefor by said E. L. Grose and Maude M. Grose, his wife, to-wit, Nine Hundred Eighty-Nine Dollars (\$989.00), and that the value of said Lot Two (2), Block Four (4), Windsor Square, by reason of said [511] failure to make said improvements as agreed upon is not in excess of the sum already paid therefor by said E. L. Grose and Maude M. Grose, his wife to-wit, Seven Hundred Twenty-Five Dollars and Fifty Cents (\$725.50).

That said E. L. Grose and Maude M. Grose, his wife, are entitled to have executed to them a deed for said lots and the cancellation of the contracts of purchase entered into by them.

Sixth: That W. R. Wells is a purchaser under a conditional sale contract of Lot Two (2) Block One (1), Windsor Square, which property is a part of the property described in the petition of the Trustee in Bankruptcy filed herein, and that at the time of the filing of the petition in bankruptcy herein, to-wit, the 25th day of October, 1930, there was due upon said contract of purchase the sum of Two Hundred Fifty Dollars (\$250.00); that no part of said amount of Two Hundred Fifty Dollars (\$250.00) has been paid by said W. R. Wells to the Trustee in Bankruptcy; that said trustee in Bankruptcy is entitled to sell said Lot Two (2) Block One (1) in Windsor Square aforesaid, subject to such rights as said W. R. Wells has in said property under said conditional sales contract aforesaid.

Seventh: That Raymond L. Nier is a purchaser under a conditional sale contract of Lot Sixteen (16), Block One (1) of Windsor Square which is a part of the property described in the petition of the Trustee in Bankruptcy herein, upon which contract there was due at the time of the filing of the petition in bankruptcy herein, the sum of Nine Hundred Seventy-One Dollars and Ninety-Two cents (\$971.92); that no part of said sum of Nine Hundred Seventy-One Dollars and Ninety-Two cents

(\$971.92) has [512] been paid to the said Trustee in Bankruptcy by said Raymond L. Nier, and that said Trustee in Bankruptcy is entitled to sell said Lot Sixteen (16), Block One (1) of Windsor Square, subject to such rights as said Raymond L. Nier may have in said lot under said conditional sales contract.

Eighth: That J. Allen Wells is a purchaser under a conditional sale contract of Lot twenty-two (22) in Block three (3) of Windsor Square, being a part of the property described in the petition of the Trustee in Bankruptcy herein, upon which conditional sales contract there was due at the date of the filing of the petition in bankruptcy on the 25th day of October, 1930, the sum of Five Hundred Fifty Dollars (\$550.00), with interest thereon from October 10, 1930; that no part of said sum of Five Hundred Fifty Dollars (\$550.00) with interest has been paid to the Trustee in Bankruptcy herein by said J. Allen Wells and that said Trustee in Bankruptcy is entitled to sell said lot twenty-two (22) in Block three (3) of Windsor Square subject to such rights as said J. Allen Wells may have in said premises under said conditional sale contract.

Ninth: That the respondent, Glenn E. Weaver, was a purchaser under a conditional sales contract of Lot 24 in Block 4 of Windsor Square, which property is a part of the property described in the petition of the Trustee in Bankruptcy filed herein, on which certain payments have been made, and that

said contract of sale has never been declared forfeited;

That the respondent, E. R. Foutz, was a purchaser under conditional sales contracts of Lots 15 and 26, in Block 7 of Windsor Square, which property is a part of the property described in the petition of the Trustee in Bankruptcy filed herein, on which contracts certain payments have been made, and [513] that said contracts of sale have never been declared forfeited;

That the respondent, Lucille Nichols, was a purchaser under a conditional sales contract of Lot 17 in Block 7 of Windsor Square, which property is a part of the property described in the petition of the Trustee in Bankruptcy filed herein, on which certain payments have been made, and that said contract of sale has never been declared forfeited;

That the respondent, Nellie B. Wilkinson, was a purchaser under a conditional sales contract of Lots 23 and 25 in Block 7 of Windsor Square, which property is a part of the property described in the petition of the Trustee in Bankruptcy filed herein, on which certain payments have been made, and that said contract of sale has never been declared forfeited;

That respondent, Susie M. Wallace, was a purchaser under a conditional sales contract of Lot 9, Block 8 of Windsor Square, which property is a part of the property described in the petition of the Trustee in Bankruptcy filed herein, on which

certain payments have been made, and that said contract of sale has never been declared forfeited;

That said Trustee in Bankruptcy is entitled to sell all of said lots subject to the respective rights of said conditional sales purchasers in said property under their respective conditional sales contracts.

XIV.

That no instrument creating or purporting to create a lien upon the property involved in this proceeding in favor of any respondent herein, or of anyone else, save and except those liens hereinabove specifically set forth, has ever been recorded in the public records of Maricopa County, Arizona.

[514]

XV.

That neither Margaret B. Barringer nor the Phoenix Title and Trust Company hold any lien against, or interest in the property involved in this proceeding, but that said Margaret B. Barringer is entitled to repayment of the amount of One Thousand Nine Hundred Fifty-seven Dollars and Ninety-three cents (\$1,957.93) advanced by her for the preservation of said property as hereinabove set forth, out of the proceeds of the sale of said property.

XVI.

That numerous creditors hold unsecured claims against said bankrupt estate, (which claims have been filed and allowed therein), who had no actual

notice of any asserted claim of lien against the property by Margaret B. Barringer or the Phoenix Title and Trust Company.

XVII.

That at the time of the filing of the petition in bankruptcy herein, there had been paid to Margaret B. Barringer upon the principal of the note executed on December 20th, 1928, by Thomas J. Tunney, by said Owens, Dinsmore and Mills, or their successors in interest, the bankrupt herein, the principal sum of Fifteen Thousand One Hundred Eighty-five Dollars and Thirty Cents (\$15,185.30), together with all interest due on said note up to the first day of March, 1930, and that the balance of the principal due on said note, to-wit, the sum of Sixty-nine Thousand Eight Hundred Sixty-four Dollars and Seventy Cents (\$69,864.70) principal, and interest thereon at the rate of seven per cent (7%) per annum up to the date of the filing of the petition herein, to-wit, the 25th day of October, 1930, was at the time of the filing of the petition in bankruptcy herein an unsecured indebtedness in favor of said Margaret B. Barringer against said bankrupt estate. [515]

XVIII.

That the "proof of claim of lien" filed herein by Margaret B. Barringer on the 25th day of April, 1931, to which objections as a claim were filed by the trustee in bankruptcy herein, was insufficient as a proof of debt against said estate, and that at the

hearing of the trustee's petition to marshal liens in this proceeding on the 25th day of November, 1931, an offer was made by the trustee in bankruptcy to permit said Margaret B. Barringer to amend said proof of claim so as to conform to the provisions of the Bankruptcy Act, which offer was refused by respondent Margaret B. Barringer.

XIX.

That the Phoenix Title and Trust Company has rendered valuable services in the administration of this bankrupt estate and is entitled to an allowance therefor as an administration expense of this estate.

XX.

That the Phoenix Title and Trust Company had a contract with the predecessors in interest of the petitioner for the rendition of services to be performed by it in the future for their benefit; that said contract did not run with the land and terminated prior to or upon the adjudication in bankruptcy herein and no claim for any damages for the breach thereof has been filed in this bankruptcy proceedings within the time required by law.

XXI.

That the property described in the petition of the trustee in bankruptcy herein should be sold and all liens upon or claims against the same should be transferred to the proceeds thereof in the order and amounts hereinabove determined and set forth.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the prayer of the petition of the trustee in bankruptcy herein be and it hereby is granted, and that the amount and priority of liens and interests in and upon the property described in said trustee's petition are hereby determined to be as follows, in the order named:

Lien for unpaid taxes upon all of said lands in the amount of One Thousand Four Hundred Ten Dollars and Forty-six Cents (\$1410.46) in favor of the State of Arizona and County of Maricopa.

Lien in favor of the Salt River Valley Water Users' Association, a corporation, upon all of said lands, for unpaid water rents and assessments in the amount of Three Hundred Fifty-nine Dollars and Thirty-four Cents (\$359.34), together with penalties and amounts accruing thereon subsequent to September 6, 1931; and that sale of said lands is made subject to lien of said Salt River Valley Water Users' Association for future assessments and water rents for which said lands are obligated.

Easement rights of the Central Arizona Light and Power Company, a public utility corporation, over streets, alleys and lands within Windsor Square Subdivision, in which is included the property described in the petition of the trustee in bankruptcy herein, as shown on the plat of Windsor Square, recorded in the office of the county recorder of Maricopa County in Book 20 of Maps, at page 37 thereof, and as further shown in that agreement recorded in

Book 40 of Miscellaneous Records at page 54 thereof; and as further shown in that agreement recorded in Book 41 of Miscellaneous Records, at page 211 thereof, all in the office of the County Recorder of Maricopa County, Arizona, [517] which easement rights, as stated in said instruments are hereby confirmed and the sale of said property is made subject to said easement rights as set forth upon said map and in said recorded instruments hereinabove referred to.

Claim of Margaret B. Barringer for repayment of the sum of One Thousand Nine Hundred Fifty-seven Dollars and Ninety-three Cents (\$1957.93) for moneys advanced by her for the preservation of said property and the payment of taxes prior to the date of the adjudication in bankruptcy herein, which sum shall be paid out of the proceeds of the sale of the property described in the petition of the trustee in bankruptcy herein, after the liens and rights hereinabove determined.

E. L. Grose and Maude M. Grose, his wife, having made full payment for Lot 1, Block 4 and for Lot 2, Block 4 of Windsor Square, being a portion of the property described in the petition of the trustee in bankruptcy herein, their rights in said lots are recognized and the trustee in bankruptcy is directed to convey title to said lots to said E. L. Grose and Maude M. Grose, his wife, under the order of sale heretofore made herein, subject to the liens and rights hereinabove determined.

W. R. Wells, having purchased under a conditional sales contract Lot 2, Block 1 of Windsor Square, being a portion of the property described in the petition of the trustee in bankruptcy herein, upon which contract of sale there was due on the date of the filing of the petition in bankruptcy herein, to-wit, October 25, 1930, the sum of Two Hundred and Fifty Dollars (\$250.00), the trustee in bankruptcy is directed to sell said Lot 2 in Block 1 of Windsor Square under the order of sale heretofore made herein subject to the rights of said W. R. Wells [518] therein under said contract of sale, and subject to the liens and rights hereinabove determined.

Raymond L. Nier, having purchased under a conditional sales contract Lot 16, Block 1 of Windsor Square, being a portion of the property described in the petition of the trustee in bankruptcy herein, upon which contract of sale there was due on the date of the filing of the petition in bankruptcy herein, to-wit, October 25, 1930, the sum of Nine Hundred Seventy-one Dollars and Ninety-two cents (\$971.92), the trustee in bankruptcy is directed to sell said Lot 16 in Block 1 of Windsor Square under the order of sale heretofore made herein, subject to the rights of said Raymond L. Nier therein under said contract of sale and subject to the liens and rights hereinabove determined.

J. Allen Wells, having purchased under a conditional sales contract Lot 22, Block 3 of Windsor Square, being a portion of the property described in

the petition of the trustee in bankruptcy herein, upon which contract of sale there was due on the date of the filing of the petition in bankruptcy herein, to-wit, October 25, 1930, the sum of Five Hundred Fifty Dollars (\$550.00) principal, with interest from October 10, 1930, the trustee in bankruptcy is directed to sell said Lot 22, Block 3 of Windsor Square under the order of sale heretofore made herein, subject to the rights of said J. Allen Wells therein under said contract of sale and subject to the liens and rights hereinabove determined.

The following lots in Windsor Square being a portion of the property described in the petition of the trustee in bankruptcy herein, having been purchased by the respective parties named herein under conditional sales contracts which have never been declared forfeited, the trustee in bankruptcy is directed to sell the same subject to the rights of the respective parties in same under conditional sales contracts as follows: [519]

Lot 24, in Block 4, subject to rights of Glenn E. Weaver therein;

Lots 15 and 26, in Block 7, subject to rights of E. R. Foutz therein;

Lot 17, in Block 7, subject to rights of Lucille Nichols therein;

Lots 23 and 25, in Block 7, subject to rights of Nellie B. Wilkinson therein;

Lot 9, in Block 8, subject to rights of Susie M. Wallace therein;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said trustee in bankruptcy,

George E. Lilley, is directed to sell free and clear of all encumbrances except as hereinabove specifically set forth, at private sale, and in compliance with the order of sale heretofore on the 18th day of June, 1931, made by this court, the property described in his said petition filed herein as follows:

(Here again follows identical schedule of blocks and lots listed in Trustee's Petition to Marshal Liens and Sell Property Free and Clear of Encumbrances, which appears ante page 170).

and that the liens upon and/or claims against said property as hereinabove determined and set forth are transferred to the proceeds of such sale in the manner, order and for the amounts as so hereinabove determined and set forth; that said sale be made subject to the approval of the Court and that upon the Trustee's return of sale herewith, ten days' notice be given by this Court by mail to creditors and all other parties interested of the hearing for the consideration of the Trustee's report of sale and for an order of distribution hereunder.

[520]

Dated this 17th day of Sept., 1932.

R. W. SMITH

Referee in Bankruptcy

Received a copy of the within order and decree this 20th day of September, A. D. 1932.

W. R. WELLS

By HAYES, STANFORD, WALTON,
ALLEE & WILLIAMS

Attys.

Received a copy of the within order and decree
this 20th day of September, A. D. 1932.

WALLACE W. CLARK

Atty. for County & State.

Received a copy of the within order and decree
this 20th day of September, A. D. 1932.

KIBBEY, BENNETT, GUST, SMITH
& ROSENFELD

Attorneys for Phoenix Title & Trust
Company, Salt River Valley Water
Users Assn.

Received a copy of the within order and decree
this 20th day of September, A. D. 1932.

ELLINWOOD & ROSS

WM. H. MacKAY

For Margaret B. Barringer

Received a copy of the within order and decree
this 22nd day of September, A. D. 1932.

CUNNINGHAM, CARSON & GIBBONS

Attorneys for E. L. Grose

Filed Sept. 17, 1932. R. W. Smith, Referee.

[Court and Cause.]

EXCEPTIONS OF RESPONDENT MARGARET
B. BARRINGER TO REFEREE'S ORDER
AND DECREE FIXING AND MARSHALL-
ING LIENS, DETERMINING PRIORITY
THEREOF AND ADJUDGING CERTAIN
ASSERTED LIENS, AND INTERESTS
NULL AND VOID.

COMES NOW Margaret B. Barringer, one of the respondents above named, by her attorneys, Messrs. Ellinwood & Ross & [521] William H. MacKay, and excepts to that certain order by the referee entered herein on September 17, 1932, entitled "Order and Decree fixing and marshalling liens, determining priority thereof and adjudging certain asserted liens, and interests null and void" upon the following grounds, to-wit:

1. Said respondent excepts to each and every, all and singular, the findings of fact in said order contained upon the ground and for the reason that said findings, and each of them, are contrary to the uncontradicted evidence.

2. Said respondent excepts to the finding in Paragraph III, at page 7, of said order, for the reason that there is no evidence to support said finding.

3. Said respondent excepts to the finding in Paragraph V at page 7 of said order, for the reason that there is no evidence to support said finding.

4. Said respondent excepts to the finding in Paragraph VI at pages 7 and 8 of said order, for

the reason that there is no evidence to support said finding.

5. Said respondent excepts to the finding in Paragraph VII at page 8 of said order, for the reason that there is no evidence to support said finding.

6. Said respondent excepts to the finding in Paragraph VIII at pages 8 and 9 of said order, for the reason that there is no evidence to support said finding.

7. Said respondent excepts to the finding in Paragraph IX at page 9 of said order, for the reason that there is no evidence to support said finding. [522]

8. Said respondent excepts to the finding in Paragraph X at page 9 of said order, for the reason that there is no evidence to support said finding.

9. Said respondent excepts to the finding in Paragraph XI at pages 9 and 10 of said order, for the reason that there is no evidence to support said finding.

10. Said respondent excepts to the finding in Paragraph XII at pages 9 and 10 of said order, for the reason that there is no evidence to support said finding.

11. Said respondent excepts to the finding in Paragraph XIII at pages 10, 11, 12, 13, 14 and 15 of said order, for the reason that there is no evidence to support said finding.

12. Said respondent excepts to the finding in Paragraph XIV at page 16 of said order, for the reason that there is no evidence to support said finding.

13. Said respondent excepts to the finding in Paragraph XV at page 16 of said order, for the reason that there is no evidence to support said finding.

14. Said respondent excepts to the finding in Paragraph XVI at page 16 of said order, for the reason that there is no evidence to support said finding.

15. Said respondent excepts to the finding in Paragraph XVII at pages 16 and 17 of said order, for the reason that there is no evidence to support said finding.

16. Said respondent excepts to the finding in Paragraph XVIII at page 17 of said order, for the reason that there is no evidence to support said finding. [523]

17. Said respondent excepts to the finding in Paragraph XX at pages 17 and 18 of said order, for the reason that there is no evidence to support said finding.

18. Said respondent excepts to the finding in Paragraph XXI at page 18 of said order, for the reason that there is no evidence to support said finding.

Said respondent excepts to said order and the purported adjudication of priority of liens thereunder for the reason and upon the ground that the uncontradicted evidence shows that the respondent, Margaret B. Barringer, has and is entitled to a valid and subsisting lien securing the sum of \$75,-777.85, together with interest thereon at the rate of 10 per cent per annum from November 5, 1930, to-

gether with 5 per cent of the whole amount due said respondent as attorney's fees, upon the premises in said order described prior and superior to all liens, by said order purporting to be adjudicated as valid and subsisting.

Said respondent further excepts to said order for the reason and upon the ground that it conclusively appears from the uncontradicted evidence that the trustee has not and is not entitled to any interest in the real estate described in said order.

Dated this 28th day of September, 1932.

ELLINWOOD & ROSS

WM. H. MacKAY

Attorneys for Respondent,
Margaret B. Barringer.

Received copy of the within Exceptions this 28th day of September, 1932.

THOMAS W. NEALON,

Attorneys for George E. Lilley,
as Trustee in Bankruptcy.

Filed Sept. 29, 1932, Ten A. M. R. W. Smith,
Referee. [524]

[Court and Cause.]

PETITION OF MARGARET B. BARRINGER
TO REVIEW ORDER AND DECREE FIX-
ING AND MARSHALLING LIENS, DE-
TERMINING PRIORITY THEREOF AND
ADJUDGING CERTAIN ASSERTED
LIENS, AND INTERESTS NULL AND
VOID, MADE AND ENTERED BY R. W.
SMITH, REFEREE, ON SEPTEMBER 17,
1932.

To R. W. SMITH, Esq., Referee in Bankruptcy:

YOUR PETITIONER RESPECTFULLY
SHOWS: That she was named as a party in that
certain Petition to Marshal Liens and Sell Free
and Clear of Encumbrances, heretofore filed herein
by George E. Lilley, as Trustee in Bankruptcy of
the above-named Bankrupt, and that a copy of the
Order to Show Cause, issued by the Referee pur-
suant to said Petition, was served upon her and
that she duly filed her Answer to said Petition and
Order to Show Cause, setting up her claim, title,
interest and lien unto and upon the property de-
scribed in said Petition and Order to Show Cause,
respectively, and that she thereby became a party
to said proceeding and has an interest in the contro-
versy involved therein; that in the course of the
above-mentioned proceeding, on September 17, 1932,
a certain order entitled "Order and Decree Fixing
and Marshalling Liens, Determining Priority there-
of and Adjudging Certain Asserted Liens, and In-
terests Null and Void" was made, entered and filed

by R. W. Smith, Esq., Referee; that a copy of said Order is hereunto annexed and made a part hereof, to which Order and the findings therein contained, your Petitioner, by written exceptions heretofore filed with said Referee on September 29th, 1932, duly excepted; that said Order is erroneous in the following respects:

I.

That in Paragraph III of said Order, the following finding is made, to-wit: [525]

“That prior to the filing of the petition in bankruptcy herein, and at the time of the filing of said petition in bankruptcy, on the 25th day of October, 1930, all of the property described in the petition of George E. Lilley, Trustee in Bankruptcy herein, to marshal liens, was in the possession of said bankrupt, and that said property was scheduled by said bankrupt in its amended schedules filed in said bankruptcy proceedings on the 12th day of December, 1930.”

That said finding is erroneous in that it appears from the Answer to said Petition to Marshal Liens of said Margaret B. Barringer, and from the uncontradicted evidence adduced at the hearing before said Referee, that Margaret B. Barringer was, on December 17th, 1928, the owner of record in fee simple of all of the property described in said Petition to Marshal Liens; that on said date, by Warranty Deed, dated December 17th, 1928, she conveyed said property, together with other premises, to Phoenix Title & Trust Company, as Trustee, and

that said Warranty Deed was duly recorded in the office of the County Recorder of Maricopa County, Arizona, on January 14th, 1929, in Book 228 of Deeds at page 515 thereof, and that said Phoenix Title & Trust Company ever since said date has been and now is the owner of record of the legal title to all of said property; that it further appears from the uncontradicted evidence that in consideration of the execution and delivery of said Warranty Deed by Margaret B. Barringer, as aforesaid, one Thomas J. Tunney, made, executed and delivered to said Margaret B. Barringer, a promissory note, payable to her order in the sum of Eighty-five thousand (\$85,000.00) Dollars, together with interest and (in the event of suit) attorney's fees, as therein set forth and that Phoenix Title & Trust Company, after receiving title to said property as Trustee, as aforesaid, executed its written Declaration of Trust dated January 9th, 1929, the provisions of which Declaration of Trust were approved [526] by said Thomas J. Tunney and said Margaret B. Barringer, under the terms of which said Phoenix Title & Trust Company acknowledged and declared that it held title to said property, as security for the payment of the principal, interest and attorney's fees of said note, and further, as security for any monies thereafter advanced by said Margaret B. Barringer, for the upkeep and preservation of said property, and under the terms of which it was expressly agreed by said Phoenix Title & Trust Company and said Thomas J. Tunney, that said indebtedness and

said advances shall be and are secured by all of the property under said trust; that said Declaration of Trust further provides that said Trustee shall convey to said Thomas J. Tunney, from time to time, certain portions of said property upon payment by him of certain specified portions of the principal of said indebtedness, PROVIDED, that the interest payable under the terms of said note is paid when due and, further provided, that said Thomas J. Tunney duly performs certain covenants on his part in said Declaration of Trust contained, including reimbursement to Margaret B. Barringer, of any monies by her advanced for the purposes aforesaid, within thirty (30) days from the date of advancement thereof, and including the payment of taxes, the making of repairs and installing certain improvements; that it is expressly provided in said Declaration of Trust that said Thomas J. Tunney shall have only such possession of said property as is necessary in the subdivision or improvement thereof or in the fulfillment of his obligations under said trust;

That it further appears from the uncontradicted evidence adduced at said hearing, that the Bankrupt at no time had acquired any right, title or interest in and to any of said property save and except the interest of said Thomas J. Tunney under said Declaration of Trust and that neither said Bankrupt nor any [527] of its predecessors in interest, ever had any possession of said premises save and except for the limited purposes aforesaid,

and that said George E. Lilley, as Trustee in Bankruptcy, was not, on October 25th, 1930, or at any other time, in possession of said property save for the purpose of making repairs and preserving the same.

II.

That in Paragraph V of said Order, the following finding is made:

“That immediately upon qualifying as such Trustee of said bankrupt estate, said George E. Lilley took possession of said property described in said petition, and ever since has had, and now has possession of said property.”

That said finding is erroneous for the reason that it appears from the uncontradicted evidence adduced at said hearing, that said George E. Lilley, at no time ever took possession of said property described in said Petition and that he is not now in possession.

III.

That in Paragraph VI of said Order, it is found that the property described in said Petition to Marshal liens is of the fair and reasonable value of \$135,232.11. That said finding is erroneous for the reason that it appears from the uncontradicted evidence that said property does not have a fair and reasonable value in excess of \$75,000.00.

IV.

That by Paragraph VII of said Order, it is found that L. D. Owens, Jr., H. C. Dinmore and

S. W. Mills, purchased the property subsequently platted as "Windsor Square", which included [528] the property described in the Petition of the Trustee in Bankruptcy herein, and immediately after consummation of said transaction, went into possession of the property described in said Petition and commenced improving the same; that said finding is erroneous for the reason that it appears from the uncontradicted evidence adduced at the hearing, that said L. D. Owens, H. C. Dinmore and S. W. Mills never purchased said property but, on the contrary, by assignment, acquired the interest under said Declaration of Trust, of said Thomas J. Tunney in said property, subject to the lien of said Margaret B. Barringer thereon, as aforesaid.

V.

That in Paragraph X of said Order, it is found that claims of various creditors filed in these proceedings were incurred by the predecessors of the Bankrupt in connection with the improvement of Windsor Square, and that such indebtedness was assumed by the Bankrupt prior to the filing of the Petition in Bankruptcy herein. That said finding is erroneous for the reason that it appears from the uncontradicted evidence that said indebtedness was not incurred by the predecessors in interest of the Bankrupt herein and further, that it appears from the uncontradicted evidence, that the assumption of said indebtedness was wholly fictitious and for the sole purpose of delaying and obstructing said Mar-

garet B. Barringer from foreclosing her lien, as in said Declaration of Trust provided.

VI.

That in Paragraph XII of said Order, it is found that Margaret B. Barringer and Phoenix Title & Trust Company permitted the Bankrupt and its predecessors in interest to exercise dominion over, retain possession of and hold themselves out to the public [529] in general and numerous creditors in particular, as the owner of the property known as "Windsor Square", and that in reliance thereon, credit was extended to the Bankrupt and its predecessors in interest by creditors whose claims have not been paid and have been filed herein. That said finding is erroneous for the reason that it appears from the uncontradicted evidence that neither said Bankrupt, nor any of its predecessors in interest ever exercised dominion over, retained possession of or held themselves out to the public in general as owners of the said property and further that it appears from the uncontradicted evidence, that neither Phoenix Title & Trust Company nor Margaret B. Barringer ever had any knowledge of any such acts on their part being done or knowledge of any facts sufficient to put them or either of them on notice or inquiry that any such acts were, by the persons aforesaid, at any time, being done.

VII.

That by Paragraph XIII of said Order, it is found that the only liens existing against the prop-

erty described in said Petition to Marshal Liens and the only interests of the various other respondents in said property and the only claims against the proceeds thereof are specific liens, claims and interests therein set forth, which neither include the interest of Phoenix Title & Trust Company nor the interest, claim and lien of the respondent, Margaret B. Barringer. That said finding is erroneous for the reason that it appears from the evidence adduced at said hearing that said Phoenix Title & Trust Company is the owner of the record title to said premises and holds the same in trust to secure the indebtedness payable to Margaret B. Barringer, under the terms of said promissory note and said Declaration of Trust; that it further appears from the uncontradicted evidence adduced at said hearing, that Margaret B. Barringer, on November [530] 5th, 1930, pursuant to the provisions in said note and Declaration of Trust contained, default having theretofore been made in the payment of the interest, according to the terms of said note, and in payment of the taxes and in the covenants to preserve and repair said property, as in said Declaration of Trust provided, declared the whole principal sum of said note, interest, and monies advanced, due and payable and served notice to such effect on said Phoenix Title & Trust Company, said Thomas J. Tunney and the Bankrupt herein. That it further appears from the uncontradicted evidence adduced at said hearing, that under the provisions of said Declaration of

Trust, and any amendments thereto that said Thomas J. Tunney and his successors in interest, had no right, title or interest, legal or equitable, to any of the property in said Petition to Marshal Liens described and that upon declaration of default by Margaret B. Barringer, as aforesaid, any and all claim of said Thomas J. Tunney and his successors in interest, including the Bankrupt and Trustee in Bankruptcy herein, immediately ceased and terminated, and for the further reason that it conclusively appears from the uncontradicted evidence in said cause that said Trustee in Bankruptcy had, prior to said declaration of default, a mere right to obtain a right, title or interest in and to said property upon payment in full of all of the amounts due said Margaret B. Barringer, under the terms of said promissory note and said Declaration of Trust, respectively, and that it further appears from the uncontradicted evidence that said Trustee in Bankruptcy, said Bankrupt and his predecessors in interest, had wholly failed to perform the covenants and obligations on the part of said Thomas J. Tunney in said note and Declaration of Trust contained, including any amendments thereto, and that they and neither of them, have since the date of such declaration of default performed any of said covenants or [531] paid to said Margaret B. Barringer any of said indebtedness whatever.

VIII.

That by Paragraph XIV of said Order, it is found that no instrument creating or purporting

to create a lien upon the property involved in this proceeding in favor of Margaret B. Barringer, has ever been recorded in the public records of Maricopa County, Arizona. That said finding is erroneous in that it was shown by the uncontradicted evidence, that title to said property was, by Warranty Deed, recorded in the office of the County Recorder of Maricopa County, on January 14th, 1929, as aforesaid, duly conveyed of record to Phoenix Title & Trust Company, as Trustee, and that said title in trust has ever since that date stood in said Phoenix Title & Trust Company, as Trustee.

IX.

That by Paragraph XV of said Order, it is found that neither Margaret B. Barringer, nor Phoenix Title & Trust Company hold any lien against or interest in the property involved in this proceeding, save and except that Margaret B. Barringer is entitled to repayment of the amount of \$1957.93, by her advanced for preservation of said property. That said finding is erroneous for the reason that it appears from the evidence adduced at said hearing that title to said property now is and ever since December 17th, 1928, has been, in Phoenix Title & Trust Company, as Trustee, for certain purposes, the first of which is to secure the indebtedness of said Thomas J. Tunney to Margaret B. Barringer, which includes, in addition to the said sum of \$1957.93, the sum of \$75,777.85, together with interest thereon from the 5th day of November,

1930, at the rate of ten percent per annum, together with the further sum of five percent on the whole amount due [532] (including the amount of said advances and interest) as an attorney's fee, which said lien, it appears from the uncontradicted evidence adduced at said hearing, is prior and superior to any interest of the Bankrupt, said Trustee in Bankruptcy, or any of the persons or corporations in Paragraph XIII of said Order mentioned.

X.

That in Paragraph XXI of said Order, it is found that the property described in the Petition of the Trustee in Bankruptcy should be sold and all liens or claims against the same should be transferred to the proceeds thereof in the order and amounts therein determined and set forth. That said finding is erroneous for the reason that it appears from the uncontradicted evidence, that neither the Bankrupt nor the Trustee in Bankruptcy have ever had any right, title or interest, legal or equitable, in and to the said property and for the further reason that it appears from the uncontradicted evidence that the value of said property is much less than the amount of Margaret B. Barringer's lien thereon.

XI.

That said Order and Decree is erroneous in the respect that it is therein ordered that said George E. Lilley, as Trustee in Bankruptcy, sell, free and

clear of all encumbrances, except as in said order specifically set forth, at private sale, in compliance with an order of sale heretofore made by said Referee; that said provision of said Order is erroneous for the reason that it appears from the uncontradicted evidence that said Trustee in Bankruptcy never acquired any right, title or interest, legal or equitable, in, to or upon said property or any portion thereof and that he is not now the owner of or in possession of any part of said property but on the contrary that Phoenix Title [533] & Trust Company is the legal owner and holder of said property and that the right of the predecessor in interest of the Trustee in Bankruptcy under said Declaration of Trust to receive an interest in said property has long since terminated due to the failure of the assignees of said Thomas J. Tunney to pay said indebtedness, advances and interest owing to the said Margaret B. Barringer and that the portion of said Order which purports to adjudicate that Margaret B. Barringer has no lien, claim or interest in said property is erroneous for the reason that if said Declaration of Trust purports to give to said Thomas J. Tunney and his assigns any interest in said property, it is given expressly subject to the lien of Margaret B. Barringer to secure the amounts hereinabove mentioned.

XII.

That said order and every portion thereof is erroneous for the reason that said Referee was with-

out any jurisdiction in said proceedings to determine the validity of the right, title, interest and/or claims of Phoenix Title & Trust Company or Margaret B. Barringer, or either of them, said bankrupt estate having no right of title or possession in, to or upon the property in said petition to marshal liens described.

XIII.

That said Order in every part thereof is erroneous for the reason that it conclusively appears from the uncontradicted evidence that said Bankrupt and his predecessors in interest expressly agreed that they should have no right, title or interest in and to said property until the indebtedness of said Thomas J. Tunney, advances by Margaret B. Barringer and interest thereon, each respectively, were within the time in said note and Declaration of Trust specified, paid, all of which indebtedness, [534] advances and interest, said persons have wholly failed to pay within the time agreed upon in said Declaration of Trust.

XII.

That said Order and every part thereof is erroneous for the reason that it conclusively appears from the uncontradicted evidence that neither the Bankrupt, nor any of its predecessors in interest ever had any interest in said property upon which a judgment creditor could levy.

XIII.

That said Order and every part thereof is erroneous for the reason that it appears from the uncontradicted evidence that any right to specific performance of the covenants in said Declaration of Trust contained inuring to the benefit of said Thomas J. Tunney, or his assigns, has long since been lost due to laches.

XIV.

Said Order and every part thereof is erroneous as a matter of law, for the reason that it is therein held and adjudged that the lien created by the Declaration of Trust securing the indebtedness to Margaret B. Barringer hereinabove mentioned, is void because said Declaration of Trust was not placed of record.

XV.

Said Order is erroneous as a matter of fact for the reason that it appears from the uncontradicted evidence that all creditors of said Bankrupt and of its predecessors in interest knew of the existence of your Petitioner's lien or had knowledge of sufficient facts to put them on inquiry as to its existence.

WHEREFORE, your Petitioner prays: [535]

(1) That said Order be reviewed and that she be restored to all things that she has lost by reason of said errors;

(2) That said George E. Lilley, as Trustee of the above-named Bankrupt, be required to surren-

der any claim in or to the premises described in his said petition to marshal liens ;

(3) That said Order of Sale be vacated or, in the alternative, that the lien of said Margaret B. Barringer be transferred to the proceeds thereof prior to any lien, charge or right of any of the persons mentioned in said Order or of any persons whomsoever.

DATED, this 29th day of September, 1932.

MARGARET B. BARRINGER,
By ELLINWOOD & ROSS,
WM. H. MACKAY,
Her Attorneys.

State of Arizona

County of Maricopa—ss.

WM. H. MacKAY, being first duly sworn, deposes and says: That he is one of the attorneys for Margaret B. Barringer, the Petitioner named in the above and foregoing Petition for Review; that he has read the said Petition and that the allegations therein are true of his own knowledge, except such allegations as are made on information and belief and those he believes to be true.

Affiant further states that this verification is made by him for the reason that Petitioner is a non-resident of the District of Arizona, residing in the City of Haverford, Pennsylvania, and that he has been in charge of the proceedings to which [536] the above Petition relates and is more familiar with said matters than Petitioner herself.

WM. H. MACKAY.

Subscribed and sworn to before me this 29th day of September, 1932.

[Seal]

RUTH HARRIS.

My commission expires Sept. 17, 1934.

(Here follows copy of Order and Decree Fixing and Marshalling Liens, Determining Priority Thereof and Adjudging Certain Asserted Liens, and Interests Null and Void, which appears ante page 231).

Receipt of a copy of the within Petition for Review received this 29th day of September, 1932.

THOMAS W. NEALON,

ALICE M. BIRDSALL,

Attorneys for George E. Lilley, as Trustee in Bankruptcy of the Estate of Windsor Square Development, Inc., a corporation, Bankrupt.

KIBBEY, BENNETT, GUST,

SMITH & ROSENFELD,

Attorney for Phoenix

Title & Trust Company.

CUNNINGHAM, CARSON &

GIBBONS,

Attorneys for E. L. Grose.

Filed Sept. 29, 1932. R. W. Smith, Referee.

SUMMARY OF EVIDENCE.

WITNESSES ON BEHALF OF RESPONDENTS BARRINGER AND PHOENIX TITLE & TRUST COMPANY.

L. J. TAYLOR.

Is secretary and trust officer of Phoenix Title & [537] Trust Company and has been employed in said capacity for several years; that in his capacity as such officer of the Phoenix Title & Trust Company he handled from time of its inception a transaction by which in the latter part of the year 1928 and the early part of the year 1929 a sale of the property afterwards subdivided as Windsor Square was made by Mrs. Margaret B. Barringer, through E. J. Bennitt acting as her agent, to L. D. Owens Jr. and his associates, the sale of the property being made for \$105,000, of which \$20,000 was paid in cash and \$85,000 was represented by a note for that amount payable to Mrs. Barringer, executed by Thomas J. Tunney; that a warranty deed dated December 17, 1928, to said property was executed by Margaret B. Barringer to Phoenix Title & Trust Company, without a consideration paid on the part of the Phoenix Title & Trust Company, this deed being received in evidence as Respondent Barringer's Exhibit No. 1 attached hereto;

(Respondent Barringer's Exhibit No. 1 in evidence is warranty deed executed by Margaret B. Barringer and D. M. Barringer, her husband, of Delaware County, Pennsylvania, to Phoenix Title

(Testimony of L. J. Taylor.)

& Trust Company, a corporation, Trustee, for stated consideration of Ten Dollars (\$10.00), of property described in deed (stipulated by counsel to comprise the property subsequently subdivided as Windsor Square), the deed being dated December 17, 1928, acknowledged in Philadelphia County, Pennsylvania, on January 5, 1929, and endorsed "Recorded in Maricopa County Records January 14, 1929, at 9:05 A. M., in Book 228 of Deeds, at pages 518-19". The deed gives Phoenix Title & Trust Company full power and authority to plat and subdivide said property, etc., to dedicate portions thereof as parks, streets and alleys to public use, and to do all acts and things for carrying out said purposes; does not warrant against taxes levied subsequent to December 31, 1928, nor against rights of way for canals, laterals and ditches) [538]

that at the time of the passing of the deed \$20,000 cash was paid into the hands of the Phoenix Title & Trust Company for the benefit of Mrs. Margaret B. Barringer by L. D. Owens Jr.; that Owens made payment of \$20,000 on January 11, 1929; that Thomas J. Tunney was an employee of the Phoenix Title & Trust Company and paid no part of the consideration in said transaction; that he, Tunney, executed the promissory note for \$85,000 payable to Respondent Barringer some time between December 17, 1928, and January 9, 1929; that Tunney received payment of \$20 as compensation for signing said note; that witness does not know the exact date the note was signed, but does know that it was not

(Testimony of L. J. Taylor.)

signed on the date which it bears; that witness knows the signature of Tunney on said note, that note being received in evidence as Respondent Barringer's Exhibit No. 3;

(Respondent Barringer's Exhibit No. 3 is promissory note dated December 20, 1928, payable to Margaret B. Barringer, for the sum of \$85,000, due three years after date, note being executed by Thomas J. Tunney; states that it is secured by Declaration of Trust No. 418 of the Phoenix Title & Trust Company; contains following endorsement on back: "Int. credited hereon to January 10, 1929, date of closing transaction as per agreement between parties. By Phoenix Title & Trust Company, L. J. Taylor, Trust Officer". No other endorsements appear on note)

that the deed (Respondent Barringer's Exhibit No. 1) was recorded on January 14, 1929, and on that date the Phoenix Title & Trust Company, through its officers, executed instrument designated declaration of trust which had theretofore been signed by Margaret B. Barringer and Thomas J. Tunney, the same, after being identified by witness, being received in evidence as Respondent Barringer's Exhibit No. 2 [539]

(Respondent Barringer's Exhibit No. 2 is entitled "Declaration of Trust made by Phoenix Title & Trust Company, Trustee". Relates to the subdivision of the property known as Windsor Square and the manner of handling sales of lots and receipts and disbursements of money. Names Margaret B.

(Testimony of L. J. Taylor.)

Barringer as payee, and Thomas J. Tunney as beneficiary. Instrument bears date as being signed by Phoenix Title & Trust Company on January 9, 1929, and as accepted by Margaret B. Barringer on January 5, 1929, and by Thomas J. Tunney on January 9, 1929. The instrument is unrecorded, and is not acknowledged)

that this declaration of trust was never recorded; that at the time of the payment of the \$20,000 by L. D. Owens Jr. to the Phoenix Title & Trust Company for Mrs. Barringer, said Owens also paid to said company the sum of \$30,000 which was deposited with the Phoenix Title & Trust Company for the purpose of paying for improvements to be made on said property in subdividing it, the two payments being made by cashier's check for \$50,000; that on January 14, 1929, the further sum of \$10,000 was paid to the Phoenix Title & Trust Company by H. C. Dinmore and S. W. Mills, associates of L. D. Owens Jr., \$7,500 of said amount by Dinmore and the other \$2,500 by Mills, this sum being also deposited to pay for improvements on Windsor Square; that the \$20,000 payment made by L. D. Owens Jr. was turned over by the Phoenix Title & Trust Company to E. J. Bennitt who was acting as Mrs. Barringer's agent; that a modification of instrument designated declaration of trust (Exhibit No. 2) dated April 4, 1929, was in the custody of witness which after identification of signatures was placed in evidence as Respondent Barringer's Exhibit No. 4;

(Testimony of L. J. Taylor.)

(Respondent Barringer's Exhibit No. 4 is entitled "Modification of Declaration of Trust", dated April 4, 1929. Assumes to modify terms of declaration of trust known as [540] Respondent Barringer's Exhibit No. 2. Recites that the interest of Thomas J. Tunney in said declaration of trust was subsequent to date thereof assigned to L. D. Owens Jr., H. C. Dinmore and S. W. Mills. The endorsement is signed by Phoenix Title & Trust Company, by Margaret B. Barringer and L. D. Owens Jr., H. C. Dinmore and S. W. Mills)

that another modification of the same instrument dated March 1, 1930 was in the custody of witness, which, after identification, was placed in evidence as Respondent Barringer's Exhibit No. 5;

(Respondent Barringer's Exhibit No. 5 consists of instrument entitled "Modification of Declaration of Trust"; is dated March 1, 1930, and assumes to modify terms of declaration of trust known as Respondent Barringer's Exhibit No. 2. The instrument is signed by Phoenix Title & Trust Company, Margaret B. Barringer and by L. D. Owens Jr., H. C. Dinmore and S. W. Mills, the latter two signing the instrument by L. D. Owens Jr. as attorney in fact)

that Exhibits Nos. 2, 4 and 5 have not been recorded; that on November 5, 1930, witness received from Wm. H. MacKay, attorney for Margaret B. Barringer, notice of default signed by Ellinwood & Ross as attorneys for Margaret B. Barringer, this notice being delivered to witness by Wm. H. Mac-

(Testimony of L. J. Taylor.)

Kay personally, and same being received in evidence as Respondent Barringer's Exhibit No. 6;

(Respondent Barringer's Exhibit No. 6 is notice of default dated November 5, 1930, addressed to Thomas J. Tunney, L. D. Owens Jr., Mary Margaret Owens, H. C. Dinmore, Estelle Dinmore, S. W. Mills, Dorothy Mills, Windsor Square Development Company, Inc., Windsor Square Improvement Company, Phoenix Title & Trust Company, L. D. Owens Jr. and H. C. Dinmore doing business under the name of Owens-Dinmore Company; signed by Ellinwood & Ross as attorneys for Margaret B. Barringer, declaring whole [541] principal and interest of promissory note (Respondent Barringer's Exhibit No. 3) immediately due and payable)

that witness disbursed money for taxes on the property known as Windsor Square in November, 1930, said taxes amounting to \$619.98, witness receiving money to pay same from E. J. Bennitt as agent for Margaret B. Barringer, tax receipts covering same being identified by witness were received in evidence as Respondent Barringer's Exhibit No. 7;

(Respondent Barringer's Exhibit No. 7 consists of tax receipts, being for taxes paid during 1930 by E. J. Bennitt as agent for Margaret B. Barringer for taxes paid on Windsor Square property)

that a list of expenses purporting to be paid by E. J. Bennitt during the fall of 1930 was consented to but not approved by the Phoenix Title & Trust Company; that since the filing of the petition in bankruptcy the Phoenix Title & Trust Company has

(Testimony of L. J. Taylor.)

been at sea as to who is the proper beneficiary and that the disposition has been to hold all receipts that have come in; that Mr. Hartley, trust officer of the Phoenix Title & Trust Company, has charge of receipts and disbursements and can answer questions as to them; that there has been no change generally in the procedure since the bankruptcy, but witness could not state whether any deeds had been executed; that he would prepare a list of all lots on which deeds had been made subsequent to bankruptcy, certifying to its correctness (Whereupon it was stipulated by counsel that such list properly certified by witness would be received later and admitted as part of witness' testimony, which list appears as Trustee's Exhibit N attached hereto);

(Trustee's Exhibit N in evidence is a certified statement compiled by L. J. Taylor showing all lots in Windsor Square conveyed by Phoenix Title & Trust Company, Trustee, subsequent to October 25, 1930. The statement shows five transfers of [542] separate lots to various parties and nine deeds issued to George E. Lilley, Trustee in Bankruptcy of the Estate of Windsor Square Development, Inc., an Arizona corporation, deeds to said Lilley being of lots in Windsor Square not included in these proceedings)

that under the declaration of trust (Respondent Barringer's Exhibit No. 2) the Phoenix Title & Trust Company (prior to bankruptcy) had done various things; that sales were made, contracts is-

(Testimony of L. J. Taylor.)

sued, deeds issued, and money disbursed by the Phoenix Title & Trust Company; that various lots embraced in these proceedings had prior to the bankruptcy been sold under a contract (whereupon it was stipulated by counsel that witness might prepare record of such contracts and status of same with payments made thereon and that same might be received in evidence as part of witness' testimony, and this record is in evidence as Respondent Phoenix Title & Trust Company's Exhibit No. 1 and Respondent Barringer's Exhibit No. 13 attached hereto);

(Respondent Phoenix Title & Trust Company's Exhibit No. 1 in evidence is a statement of the condition of those lots included in the trustee's petition to marshal liens filed herein which are held under sales agreements (shown on Respondent Barringer's Exhibit No. 13) as of date December 12, 1931, said statement showing respective purchasers, purchase price, date of contract, amount paid on principal, balance due on principal, interest paid, date of last payment and amount of monthly payment)

(Respondent Barringer's Exhibit No. 13 in evidence consists of a certificate of L. J. Taylor dated December 12, 1931, (Same being accepted as part of testimony of L. J. Taylor by stipulation of counsel) certifying that of the lots described in the petition of trustee in bankruptcy to marshal liens, etc., [543] filed in this proceeding, only one has been released

(Testimony of L. J. Taylor.)

from the asserted lien of Margaret B. Barringer, same being Lot 2 Block 1 deeded to W. R. Wells December 4, 1930, under sales agreement entered into October 15, 1930; that all other lots described in trustee's petition, and in addition Lot 28 Block 9 Windsor Square, are still held by Phoenix Title & Trust Company under the so-called declaration of trust (Respondent Barringer's exhibit No. 3), subject to sales agreements on following described lots: Lot 16 Block 1, Lot 22 Block 3, Lots 2 and 24 Block 4, Lots 15, 17, 23, 25 and 26 Block 7, and Lot 9 Block 8. Attached to this exhibit is also blank form of the deed used by the Phoenix Title & Trust Company in making sales in Windsor Square) that since bankruptcy there have been no sales of lots involved in these proceedings; that some lots have been sold through the Bankruptcy Court, but not any lots described in these proceedings; that the form of contract used on all contract sales made in Windsor Square was similar in form to one introduced in evidence as Respondent Grose's Exhibit No. 1, and that all of said contracts had the same conditions except one or two which in addition contained a typewritten provision for subsequent paying lien assessments; that he would furnish for the record a printed form of deed used by Phoenix Title & Trust Company in making a conveyance of lots in Windsor Square, the same form being used on all deeds issued by said company (This form of deed was later produced and is in evidence as part

(Testimony of L. J. Taylor.)

of Respondent Barringer's Exhibit No. 13 attached hereto); that certain assignments were delivered and held by the Phoenix Title & Trust Company in connection with the transactions concerning Windsor Square, said assignments being identified by witness and introduced in evidence as Respondent Barringer's Exhibits Nos. 9, 10, 11 and 12 attached hereto;

(Respondent Barringer's Exhibit No. 9 is entitled "Assignment"; dated January 11, 1929; signed by Thomas J. Tuney; [544] acknowledged by Tunney January 12, 1929; purports to assign for the consideration of one dollar and other valuable consideration to L. D. Owens Jr., husband of Mary Margaret Owens, an undivided $\frac{5}{6}$ interest; to H. C. Dinmore, husband of Estelle Dinmore, an undivided $\frac{1}{8}$ interest; and to S. W. Mills, husband of Dorothy Mills, an undivided $\frac{1}{24}$ interest, being all of the rights of assignor in and to Declaration of Trust No. 418 (Respondent Barringer's Exhibit No. 2), and in and to real property thereafter described, being the property known as Windsor Square. An acceptance of same by Len Owens Jr., H. C. Dinmore and S. W. Mills without date appears thereon. An acceptance by Phoenix Title & Trust Company, dated January 14, 1929, appears thereon)

(Respondent Barringer's Exhibit No. 10 is entitled "Assignment", dated June 4, 1930, executed by L. D. Owens Jr. and Mary Margaret Owens, his wife, and H. C. Dinmore and Estelle Dinmore, his

(Testimony of L. J. Taylor.)

wife, and S. W. Mills and Dorothy Mills, his wife, to Windsor Square Development, Inc., an Arizona corporation, purporting to assign and transfer for a consideration of \$10.00 to Windsor Square Development, Inc., all rights of said parties in and to Declaration of Trust No. 418 (Respondent Barringer's Exhibit No. 2), and in and to real property described as Windsor Square, subject to all indebtedness and liabilities in connection with said property. L. D. Owens Jr., Mary Margaret Owens, S. W. Mills and Dorothy Mills signed by L. H. Gibbs as attorney in fact, and Estelle Dinmore signed by H. C. Dinmore, attorney in fact. Instrument acknowledged June 5, 1930, and is accepted June 4, 1930, by Windsor Square Development, Inc., by Gene S. Cunningham, president, and by Phoenix Title & Trust Company on June 5, 1930.

(Respondent Barringer's Exhibit No. 11 is an assignment by Windsor Square Development, Inc., by Gene S. Cunningham, [545] president, attested by Margaret Richardson, secretary; dated October 24, 1930, purporting to assign and transfer to L. D. Owens Jr. same property described in Exhibit No. 10 of Respondent Barringer. Same is accepted by L. D. Owens Jr. and by Phoenix Title & Trust Company on October 24, 1930. Minutes of corporation meeting authorizing action attached thereto)

(Respondent Barringer's Exhibit No. 12 is an assignment dated October 25, 1930, executed by Len Owens Jr. and Mary Margaret Owens by Len

(Testimony of L. J. Taylor.)

Owens Jr., her attorney in fact, purporting to assign to Windsor Square Development, Inc., an Arizona corporation, for a consideration of \$10.00 all rights and benefits of said parties in and to Declaration of Trust No. 418 of the Phoenix Title & Trust Company (Respondent Barringer's Exhibit No. 2), and in and to property described as Windsor Square, excepting 51 lots described therein stated to have been collaterally assigned to the Phoenix Savings Bank & Trust Company to secure payment of \$26,500 and stated to have been subsequently absolutely assigned October 24, 1930, to L. D. Owens Sr., husband of Isabel Owens. The same is accepted by Windsor Square Development, Inc., by John Koester, president, attested by Len Owens Jr., secretary, under date of October 25, 1930, and accepted by Phoenix Title & Trust Company October 25, 1930)

that there was not in the files of the Phoenix Title & Trust Company with the papers held by them in connection with transactions concerning Windsor Square any written authority from Messrs. Owens, Dinmore and Mills and their respective wives authorizing Thomas J. Tunney to act as agent for them in signing any instruments concerning real estate, nor had witness ever seen any such authority; that he had in his custody as secretary of the Phoenix Title & Trust Company a communication from Owens, Dinmore and Mills dated during the month of January, 1929, advising the company to

(Testimony of L. J. Taylor.)

pay a commission on sales of lots in Windsor Square; that the same was handed [546] to him by Mr. Owens after he had prepared it (said letter being introduced in evidence as Respondent Barringer's Exhibit No. 14);

(Respondent Barringer's Exhibit No. 14 consists of "Trust Instructions" to Phoenix Title & Trust Company dated January 11, 1929, signed by L. D. Owens Jr. and wife, H. C. Dinmore and wife and S. W. Mills and wife, relative to payment of commissions of 23% to Owens-Dinmore Company) that witness later received a communication from Mr. Owens on behalf of himself, Dinmore and Mills and their respective wives in regard to the payment of the commission mentioned in Respondent Barringer's Exhibit No. 14; the same being produced and identified was received in evidence as Respondent Barringer's Exhibit No. 15

(Respondent Barringer's Exhibit No. 15 consists of instructions signed by L. D. Owens Jr., dated April 9, 1929, issued to Phoenix Title & Trust Company relative to disbursements of payments of monies in improvement fund)

that he had in his custody a communication from Owens-Dinmore Company dated October 16, 1930, containing a waiver of such commissions, and after identification the same was received in evidence as Respondent Barringer's Exhibit No. 16;

(Respondent Barringer's Exhibit No. 16 consists of instructions issued to Phoenix Title & Trust

(Testimony of L. J. Taylor.)

Company by Owens-Dinmore Company, a co-partnership, dated October 16, 1930, and containing waiver of commissions, same being accepted by Windsor Square Development, Inc.)

that no new contracts for sales of lots had been made since the filing of the petition in bankruptcy on October 25, 1930, except one contract dated October 27, 1930, order for which had been received prior to the filing of the bankruptcy proceedings; that payments were made into the improvement fund disbursed by the [547] Phoenix Title & Trust Company in the Windsor Square matter in excess of the amount named in the so-called declaration of trust; that the improvements made by Mr. Owens and his associates on the tract were superior to those contemplated by the declaration of trust and that funds were furnished by L. D. Owens Jr. to meet such payments.

M. L. HARTLEY.

That he is treasurer of the Phoenix Title & Trust Company and has charge of the receipts and disbursements of the money of said company; that in January, 1929, he was notified by the other officers of the company that the declaration of trust (Respondent Barringer's Exhibit No. 1 attached hereto) had been executed and a copy of same was placed in his custody; that he had charge of receipts and

(Testimony of M. L. Hartley.)

disbursements thereunder; that subsequent to January, 1929, and prior to October 25, 1930, there had been collected from the sale of Lots in Windsor Square and applied on the note of Thomas J. Tunney (Respondent Barringer's Exhibit No. 3 attached hereto and summarized above) the amount of \$15,125.30, leaving a balance due thereon of \$69,864.70; that at the present time the Phoenix Title & Trust Company holds a balance of \$2,015.55 to apply upon said note, but had made no application of said amount by reason of the bankruptcy proceedings; that in accordance with instructions from the trust department of the Phoenix Title & Trust Company the trust had been held in status quo ever since the institution of the bankruptcy proceedings.

WM. H. MACKAY.

That he is the acting attorney for Margaret B. Barringer and that as such attorney on November 5, 1930, he personally delivered to L. D. Owens Jr. and Thomas J. Tunney each a copy of notice [548] of default introduced in evidence as Respondent Barringer's Exhibit No. 6 summarized above; that he sent a copy of same by registered mail to Windsor Square Development, Inc., care of L. D. Owens Jr., San Carlos Hotel, Phoenix, Arizona; that he never served a copy on the trustee in Bankruptcy, and that he never filed a copy of same in the United States Court nor in the Referee's Court.

E. J. BENNITT.

Is brother-in-law of Margaret B. Barringer, Respondent, and acted as her agent in the sale of the property afterwards subdivided as Windsor Square; that he negotiated sale of the property in December, 1928, and January, 1929, to L. D. Owens Jr., at a total consideration of \$105,000, and that he was paid a commission of \$5,000.00 for making the sale; that he is thoroughly familiar with the property; that early in the summer of 1930 the property appeared in normal condition; that at that time a man by the name of Schrader had been looking after the property for Mr. Owens, being in charge of the pump, keeping the streets in repair and the ditches clean and the subdivision in a good state of repair and preservation; that later in the summer of 1930 while witness was in San Diego he was notified by the light company that they would have to shut off the power unless arrangements were made to take care of the bills; that Mr. Shradler also notified him what the conditions were and stated that neither Owens nor the Phoenix Title & Trust Company would take care of the property; that he (Bennitt) thereupon instructed Schrader to go ahead and do what was necessary and he would see that Schrader was paid; that witness felt it was somebody's property and must be taken care of; that he thereupon made expenditures shown by account presented and admitted in evidence, being Respondent Barringer's Exhibit No. 8 in evidence; [549]

(Testimony of E. J. Bennett.)

(Respondent Barringer's Exhibit No. 8 consists of statement of monies advanced by Margaret B. Barringer through E. J. Bennett, her agent, in connection with Windsor Square property up to December 31, 1930, the aggregate amount of same being \$1,957.93)

that these expenditures were made in caring for said property and aggregated \$1,957.93; that no payments on behalf of Mrs. Barringer for care and preservation of said property had been made after December 20, 1930; that on said last date witness paid as agent for Mrs. Barringer the power bill up to December 8, 1930, as shown on said Exhibit No. 8, and witness thereupon turned over the caretaker and the premises to Mr. George E. Lilley, Trustee in Bankruptcy; that he would be surprised if at the present time the property could be sold as a whole for more than \$50,000.00 in cash; that this opinion was not based upon the real value of the property but upon what could be obtained for it now; that there were from 195 to 200 lots involved in this proceeding and that sales value of the lots should be from \$400 to \$800 per lot; that he did not consider there had been much change in the value of the property during the preceding year.

GEORGE E. LILLEY.

Is a realtor and well acquainted with values of real property in and around Phoenix; is also the

(Testimony of George E. Lilley.)

Trustee in Bankruptcy of Windsor Square Development, Inc.; that in his opinion the present sales price of the property involved in these proceedings based on cash sales actually made on lots in Windsor Square during the preceding months is around \$120,000; that approximately 200 lots are involved in these proceedings and that the average sales for cash had been \$600 per lot, these sales having been made of lots in Windsor Square not involved in these proceedings [550] by him as Trustee in Bankruptcy under orders of the Court; that under present market conditions property could not be sold speedily for cash, but there is no reason why under normal conditions tract could not be speedily sold, as it is beautifully located and well improved; identifying plat, Orange Drive, North Windsor Drive, Windsor Boulevard and Windsor Drive. streets in subdivision are wholly paved; Arden and Kennmore streets are about 80% paved; there is county paving on Seventh Street and county paving on Camelback Road; that the class of paving in the tract is macadam and bithulitic, about five inches thick; that Camelback Road, Seventh Street and Central Avenue on three sides of tract are paved with concrete.

HARRY KAY.

Is real estate man familiar with values in and around Phoenix; that in his opinion value of property known as Windsor Square on an acreage basis is approximately \$1,000 to \$1,200 per acre; that the acreage is approximately 70 acres, it being an 80-acre tract with 10 acres in corner belonging to some other persons; that his opinion is not based on any sales made in the vicinity during the past year or more; that he was taking into consideration that property was on paved streets, but did not know much about the improvements on the tract; that he did not know the paving in subdivision was all paid for; that he would consider a fair valuation at present time for Lot 3 Block 1 Windsor Square to be \$400; Lot 5 Block 1, \$400; Lot 10 Block 1, \$300; Lot 11 Block 1, \$300; Lot 14 Block 1, \$400; Lot 18 Block 1, \$350; Lot 18 Block 2, about \$350; Lot 40 Block 2, \$550; Lot 1 Block 3 about \$600; Lot 38 Block 3, \$650; Lot 10 Block 5, \$550; Lot 14 Block 8, \$450; Lot 21 Block 8, \$650 or a little more; Lot 1 Block 9, \$1,200; Lot 26 Block 4, \$1,800. [551]

R. J. NUNNELLY.

Is a realtor and familiar with values of property in and around Phoenix; that in his opinion he could make a sale of the property involved in these proceedings for \$75,000 cash; that he arrived at this figure by figuring value of land from a farm stand-

(Testimony of R. J. Nunnally.)

point in case the lots did not sell; that he did not know which streets were paved and did not know the value of the improvements on the property; that he did not base his opinion on any sales of property made in the vicinity; that in his opinion the present value of Lot 40 Block 2 Windsor Square is \$350; Lot 1 Block 3 is \$350; Lot 38 Block 8, \$400; Lot 10 Block 5, around \$200; Lot 14 Block 8, \$200; Lot 21 Block 8, \$400; Lot 9 Block 9, \$200.

GENE S. CUNNINGHAM.

Is a practicing attorney of Phoenix; that he was one of the incorporators and performed the legal services in organizing the Windsor Square Development, Inc., a corporation; that he was president and a director of the corporation up to October, 1930; that at that time he turned over to L. D. Owens Jr. the articles of incorporation, certificate of incorporation, receipts for fees paid and minutes of directors' meeting; that up to the time he turned the organization over to L. D. Owens Jr. he had not assumed or contracted for the payment of any bills other than for the organization of the corporation; that the reason for the organization of the corporation was a prospective program of financing in the interests of Messrs. Owens, Dinmore and Mills; that an assignment he identified is an assignment made by Owens, Dinmore and Mills to the

(Testimony of Gene S. Cunningham.)

Windsor Square Development, Inc., a corporation, in furtherance of the plans for financing, but that these plans for financing were never consummated; (This assignment [552] received in evidence as Respondent Barringer's Exhibit No. 10 and summarized above); that the contemplated financing program was never completed; that the corporation was completed and the corporation acted for Owens, Dinmore and Mills, but that the other parties who contemplated putting up money to finance it did not do so and therefore obtained no interest in the corporation; that the capital of the company was to be paid in by the transfer by Owens, Dinmore and Mills of their lands; that Owens, Dinmore and Mills had the interest in the corporation that was represented by their interest in the lots, but that stock certificates to evidence it were never issued; that the assignment made by Owens, Dinmore and Mills and their respective wives (being Respondent Barringer's Exhibit No. 10 attached hereto) was made prior to the actual existence of the Windsor Square Development, Inc., a corporation; that it was a part of a plan of some interests represented by witness as attorney, to get Owens, Dinmore and Mills from under the pressure of *matured and* indebtedness, and that the people for whom witness organized the corporation known as Windsor Square Development, Inc., did not want the property resting in individuals, but desired it held by a corporation which was the reason for the organization of

(Testimony of Gene S. Cunningham.)

the corporation that took the assignments, the intention being that the money raised would take care of the matured outstanding indebtedness which went with the property; that during the time the witness was investigating or organizing the corporation known as Windsor Square Development, Inc., and some time prior to the filing of the articles of incorporation the witness had a conference with Mrs. Barringer, Mr. L. J. Taylor of the Phoenix Title & Trust Company, and Mr. Tom Maddock, an engineer who had been in charge of making improvements on Windsor Square; that the purpose of the meeting was to discuss the matter of clients of the witness financing a program which would take care of indebtedness to Mrs. Barringer, and to Phoenix Savings [553] Bank & Trust Company, municipal taxes, indebtedness to office of Phoenix Title & Trust Company itself, and to get at true amount of indebtedness, and to ascertain the amount of improvements and the amount of money which had actually been expended in improvements made on Windsor Square up to that time; that the witness ascertained from Mr. Maddock's records that the improvements made at that time were estimated to be about \$90,000, in addition to amounts expended in advertising; that there was owing at that time \$28,000 to \$30,000 to Phoenix Savings Bank & Trust Company for which some lots had been put up as security, a substantial amount to Mrs. Barringer and to the state and

(Testimony of Gene S. Cunningham.)

county for taxes, and several thousand dollars to Maddock & Holmquist for current matters; that there was no plan in the organization of the corporation to avoid any liabilities contracted by the previous owners.

WITNESS ON BEHALF OF RESPONDENT
W. R. WELLS.

W. R. WELLS.

Witness testified to purchasing a lot in Windsor Square being Lot 2, Block 1, and also other lots in Windsor Square not involved in these proceedings; that he received the deed for Lot 2 Block 1 in November or December, 1930.

WITNESS ON BEHALF OF RESPONDENT
E. L. GROSE.

E. L. GROSE.

Lives in Phoenix, is married, and that his wife's name is Maud M. Grose; that he became acquainted with the property known as Windsor Square about March, 1929, his attention having been called to it by advertisements in the paper about the property being for sale and by a sign on the property "Windsor Square Owens-Dinmore"; that he and his wife went out to the tract and talked with Mr. Owens who showed them lots; that they picked out a corner lot to purchase, this being Lot 1 Block 4 Windsor [554] Square; that the price given was \$1775, pro-

(Testimony of E. L. Grose.)

viding that they were going to pave Colter Street, which is the street to the north of the property; that he made a down payment on this lot on the 17th of February, and was given a receipt with the terms set up in it; that at the time he went to see this lot there was a sidewalk and curb in front of the lot and that they were paving the street but had not yet reached the lot he purchased; that there was a sign upon the corner that said the paving would be completed and the lights would be in by a certain time and the water would be in by a certain time; that the sign on the property had the name "Owens-Dinmore" upon it; that later he bought another lot next to the one he first purchased, this lot being Lot 2 in Block 4 Windsor Square, and that he dealt with Mr. L. D. Owens, the same man he dealt with in purchasing the first lot; that at the time he purchased the second lot Mr. Owens was on the property and the sign was still up, with "Owens-Dinmore" upon it; that at the time he purchased the second lot they were still working on the pavement and had some of the posts up for the ornamental lighting; that the cement walks and curbs were in up to about Colter Street, but that the paving had not been completed and has never been completed; that it laps over on the second lot at the present time approximately 15 or 20 feet and has stopped and does not go past the other lot at all; that at the time of his dealing with Mr. Owens he did not have dealings with the Phoe-

(Testimony of E. L. Grose.)

nix Title & Trust Company and there was no person on the tract purporting to represent the Phoenix Title & Trust Company; that Mr. Owens told the witness that the payments were to be made at the Phoenix Title & Trust Company where witness was to sign an agreement and that the deed was to be placed in escrow and that when the payments were completed it would be delivered to witness; that he thereafter went to the Phoenix Title & Trust Company and signed an agreement; [555] that his first down payment on the first lot was February 17, 1929, and the contract is dated March 20th of the same year; that a down payment on the second lot purchased was made in September, 1929, and the contract dated October 9th of that year; that the contracts were signed at the Phoenix Title & Trust Company on the respective dates of same; that he thereafter made payments on the two lots, the last payment being made about September 30, 1930; that he made the payments regularly from the dates of the respective purchases up to that time; that he quit making payments because Mr. Owens told him he was putting this stuff in bankruptcy and witness did not know what his status would be; that in his first conversation with Mr. Owens the price of Lot 1 Block 4, with Colter Street paved, was to be \$1775, and without the paving the price was to be reduced between \$250 and \$400 on the lot; that in his first conversation with Mr. Owens about the completion of the paving, Mr. Owens

(Testimony of E. L. Grose.)

stated it hinged on whether or not the proper arrangements could be made with the people who owned the land across the street and that before the contract was signed Mr. Owens said that satisfactory arrangements had been made and that Colter Street would be paved; that at the time he was making these payments to the Phoenix Title & Trust Company, prior to the time he ceased making payments, he did not know of any mortgage or lien upon the two lots purchased by him; that at the time he bought the lots and saw the pavement partially constructed, and when the statement was made by Mr. Owens that the pavement would be constructed, he believed Mr. Owens and bought the lots, relying on that statement. Witness identified contract covering Lot 1 Block 4 which was received in evidence as "Respondent Grose's Exhibit No. 1":

(Respondent Grose's Exhibit No. 1 in evidence consists of original sales agreement covering Lot 1 Block 4 of Windsor Square executed to E. L. Grose and Maud M. Grose, his wife, by [556] Phoenix Title & Trust Company, Trustee, on March 20, 1929, for the consideration of \$1775)

identified similar contract covering Lot 2 Block 4 which was received in evidence as "Respondent Grose's Exhibit No. 2";

(Respondent Grose's Exhibit No. 2 in evidence consists of original sales agreement covering Lot 2 Block 4 of Windsor Square executed to E. L. Grose and Maud M. Grose, his wife, by Phoenix

(Testimony of E. L. Grose.)

Title & Trust Company, Trustee, on March 20, 1929, for the consideration of \$1675)

also receipts for payments made by witness which were received in evidence as "Respondent Grose's Exhibit No. 3";

(Respondent Grose's Exhibit No. 3 in evidence consists of original receipts for payments made by E. L. Grose on account of Lot 1 Block 4 Windsor Square and Lot 2 Block 4 Windsor Square) that at the time of his negotiations for the purchase of the lots, he supposed he was dealing with the owners of the property; that he made no examination of the records, but that he assumed that Owens was the owner, because they were advertising as owners of Windsor Square and were selling Windsor Square and were in possession of the property; that his contract was with Windsor Square, which he supposed was a corporation; that the advertising bore the name "Owens-Dinmore" or Owens Dinsmore"; that after the purchase of the lots by him an auction of lots was held on the tract at which Owens-Dinmore posed as the owners of the tract before a notary public; that at the time he signed the contract he still felt that Owens and his associates were the outright owners of Windsor Square; that he went to the Phoenix Title & Trust Company and signed the contracts supposing they were the agents in the deal and that he didn't even read the contracts, because of his confidence in the Phoenix Title & Trust Company, and that he felt the Phoe-

(Testimony of E. L. Grose.)

nix Title & Trust Company was acting in the matter as agent for Mr. Owens and his associates; that he did not [557] employ an attorney and made no search of the records in the office of the county recorder.

FOR RESPONDENT SALT RIVER VALLEY
WATER USERS' ASSOCIATION.

It was stipulated between counsel that the facts stated in the sworn answer of Respondent Salt River Valley Water Users' Association are correct.

FOR RESPONDENTS COUNTY OF MARI-
COPA, STATE OF ARIZONA, JOHN D.
CALHOUN, County Treasurer of the County
of Maricopa, State of Arizona; MITT SIMS,
Treasurer of the State of Arizona.

It was stipulated between counsel that lien for taxes might be fixed for amount shown in statements filed without penalties, amount being shown to be \$1410.46.

EVIDENCE ON BEHALF OF TRUSTEE IN
BANKRUPTCY GEORGE E. LILLEY.

The following Exhibits were introduced in evidence:

Trustee's Exhibit A in evidence consists of map of Windsor Square.

Trustee's Exhibit B. in evidence consists of copy of Petition in Bankruptcy dated October 25, 1930, and filed October 25, 1930, signed by Len D. Owens Jr. as treasurer of Windsor Square Development, Inc., a corporation.

Trustee's Exhibit C in evidence is the Order of Adjudication and Reference of Windsor Square Development, Inc., Bankrupt, October 28, 1930.

Trustee's Exhibit D in evidence consists of certified [558] copy of the order of the Referee approving bond of George E. Lilley, Trustee in Bankruptcy, dated November 15, 1930.

Trustee's Exhibit E in evidence consists of Proof and Claim of Lien filed by Margaret B. Barringer in said estate on April 25, 1931, the same being sworn to by Wm. H. MacKay as agent of said creditor on April 24, 1931; sets forth Tunney note for \$85,000, and sets forth as Exhibits attached to said proof and claim of lien Exhibit A, declaration of trust; Exhibits B and C, modification of same; Exhibits D and E, being lists of lots (and being same lots included in these proceedings); Exhibit F, statements of advances asserted to have been made by Margaret B. Barringer to December 31, 1930, amounting to \$1,962.33; asserts a lien upon said lots described in Exhibits D and E, and states "By the filing of this instrument Margaret B. Barringer intends to claim a first lien upon the premises described in said Exhibits D and E, * * * and said

Margaret B. Barringer hereby petitions the Court to order that the said property and contracts which are subject to her lien as aforesaid be sold for the purpose of satisfying indebtedness, advanced interest, attorney's fees and costs''.

Trustee's Exhibit F in evidence is an undated instrument stated to be Petition in Intervention and Objections to Sale, of Margaret B. Barringer. Objection is made on three grounds, first being an assertion that Margaret B. Barringer is the owner of lien on lots described on Bankruptcy Schedule of Assets, reference being made to Petitioner's Proof of Claim of Lien heretofore filed for a more certain description of amount of her lien and security therefor. The second ground sets forth petitioner's right to use the indebtedness secured by said lien in payment of purchase money if property is sold at judicial sale and that until amount of petitioner's lien is judicially determined, Referee is without authority to sell petitioner's security. Third, petitioner objects to any sale of her said security pursuant to any order of sale not [559] expressly authorizing petitioner to bid thereat and in payment to apply amount of her claim against purchase price. Petitioner prays that no order of sale be made until her lien is adjudicated; that her lien be adjudicated and that the Trustee and all persons be required to adjudicate validity and amount of petitioner's lien before any action can be taken by Referee in the premises. (Admitted in evidence after Wm. H. MacKay, counsel for Margaret B. Bar-

ringer, called as witness to identify this instrument, testified that it was copy of an instrument which he had in his possession and produced in Court at time of hearing on a petition for order of sale of real estate; that copy was given by counsel for Trustee in Bankruptcy; that he intended to file original, but apparently didn't, and that he orally stated contents of instrument at hearing by way of objection to Court entering such an order of sale; that application for sale was denied at that time which was probably reason instrument not filed)

Trustee's Exhibit G in evidence is the order authorizing sale of real estate free and clear of incumbrances and directing all liens held by lien-holders to be transferred to proceeds, said order entered in these proceedings on the 18th day of June, 1931.

Trustee's Exhibit H in evidence is appointment, oath and report of appraisers filed as of date January 12, 1931, the appraisers being Walter Martin, L. R. Bailey and Eben Lane, all of whom signed said appraisal. It shows appraisal of lots in Windsor Square involved in this proceeding at \$136,819.50; contracts of sales of lots appraised at \$31,789.09, and a deposit with the Central Arizona Light & Power Company appraised at \$2,727.42, and a total appraisement of all property of \$171,336.01.

Trustee's Exhibit I in evidence consists of petition of appraisers of bankrupt estate for compensation; is dated [560] February 12, 1931, signed and sworn to by Walter Martin, L. R. Bailey and Eben Lane, appraisers appointed by the Court;

states at length the amount of time and work devoted to making a scientific appraisal of the property in question and sets forth that each appraiser devoted five days actual time to making said appraisal, basing same on data obtained showing actual expenditures for improvements on property, the location, frontage of lots, value of improvements already placed thereon, possibilities for utilization of various of the lots, etc.; asks for payment of \$100 to each appraiser.

Trustee's Exhibit J in evidence is Schedule A(3) of Bankrupt's amended schedules filed December 15, 1930, being list of creditors whose claims are unsecured and consists of 22 unsecured claims aggregating \$47,453.78.

Trustee's Exhibit K in evidence is Schedule B(1) of Bankrupt's amended schedule filed December 15, 1930, being statement of real property of Bankrupt. It lists some 82 lots in Windsor Square, all included in the property involved in these proceedings, and 11 other lots in Windsor Square not included in these proceedings which are stated as being subject to as assignment to the Phoenix Savings Bank & Trust Company to secure a \$26,500 note. The total real estate is listed as of a value of \$270,000.

Trustee's Exhibit L in evidence is Schedule A(3), (creditors whose claims are unsecured), of Bankrupt's schedules filed in original record as of October 30, 1930; consists of list of 25 separate claims aggregating \$60,013.06.

Trustee's Exhibit M in evidence consists of a statement of the Phoenix Title & Trust Company of the amounts received on account of lots in Windsor Square included in Trustee's Petition to Marshal Liens, etc., filed herein since October 25, 1930, [561] the date of the filing of the Petition in Bankruptcy. Statement shows balance on hand October

28, 1930	2404.58
Receipts from October 28, 1930, to Dec. 1, 1931,	9302.01

\$11706.59

Disbursements from Oct. 28, 1930, to Dec.

1, 1931	9350.32
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Balance on hand Dec. 1, 1931, \$2356.27

The statement also shows the allocations of the disbursements made by the Phoenix Title & Trust Company.

Trustee's Exhibit N in evidence is a certified statement compiled by L. J. Taylor showing all lots in Windsor Square conveyed by Phoenix Title & Trust Company, Trustee, subsequent to October 25, 1930. The statement shows five transfers of separate lots to various parties and nine deeds issued to George E. Lilley, Trustee in Bankruptcy of the Estate of Windsor Square Development, Inc., an Arizona corporation, deeds to said Lilley being of lots in Windsor Square not included in these proceedings.

Witnesses.

W. M. SMITH

Is clerk in the Referee's Court in Bankruptcy and held that position on June 8, 1931; that it is one of his duties to send out notices of meetings of creditors in bankruptcy matters; that on June 8, 1931, he mailed the following notice of a meeting of creditors of Windsor Square Development, Inc., a corporation, Bankrupt No. B-570, Phoenix, to be held on the 18th day of June, 1931, at two o'clock, at 315 Ellis Building, Phoenix, Arizona, to Margaret B. Barringer:

"In the District Court of the United States, for the District of Arizona.

"In the Matter of Windsor Square Development, Inc., a corporation, Bankrupt.

"Notice in Bankruptcy, No. B-570-Phx. [562]

"To the Creditors of the Above Named Bankrupt:

"Notice is hereby given that on the 18th day of June, 1931, at 2:00 in the afternoon, a meeting of the creditors of the above named bankrupt will be held at my office No. 315 Ellis Building, in the City of Phoenix, Arizona, at which time the creditors may attend, consider Trustee's petition to marshal liens and sell property free and clear of encumbrances, and transact such other business as may properly come before the meeting.

(Testimony of W. M. Smith.)

“Phoenix, Arizona, June 8th, 1931.

R. W. SMITH, Referee in Bankruptcy.”

that said notice was addressed to said Margaret B. Barringer in care of Wm. H. MacKay, attorney, Phoenix, Arizona, the said attorney being the same Wm. H. MacKay personally in court at the time of the hearing.

THOMAS MADDOCK

Is an engineer engaged in that profession about 31 years; that his partnership known as Holmquist & Maddock, consisting of himself and Mr. Fritz Holmquist, supervised the putting in of the improvements in Windsor Square; that the work continued for approximately a year; that the work done and the amounts paid therefor were substantially as follows: clearing and leveling the land and ditching, etc., done by O. F. Fisher, cost \$685.92; a well sunk 450 feet by one Garrison costing \$2350, with pipe line system put in by Mr. Fisher, \$12,177.48; sidewalks and curbs, cost \$19,246.68; electric light standards, \$6,498; electric light wiring, \$3,169.03; entrance posts, for lights, etc., to streets, \$696; installing of pump, tanks, motors, etc., \$2,696; Arizona Sand & Rock Company, for sand and rock paving, \$11,784.91; force account on paving work, to Fisher, \$24,246.20; Central Arizona Light & [563] Power Company, \$1,751.80, and later \$1,480; that these items totaled \$86,728.02, to which

(Testimony of Thomas Maddock.)

was added the engineer's 5% commission of \$4,336.40; additional work on the survey and laying out of the project amounted to \$1,328.26, the total items listed being \$92,392.68; that these were all items which went through the offices of the engineers; that these figures did not include shrubbery, trees, etc., on the subdivision; that the cost of these improvements as compared with the value was remarkably cheap and that these improvements could probably not be duplicated any cheaper even under depression figures; that the services rendered by Holmquist & Maddock were contracted for with Owens and Dinmore; that Owens and Dinmore were on the property and directed the work thereon; that the payments for the work were received by Maddock & Holmquist from Owens and Dinmore; that witness was present at some conferences carried on with Gene Cunningham and others regarding a contemplated plan for financing program for Owens and Dinmore; that at that time Owens and Dinmore stated that they were very hard up and were endeavoring to raise funds from other sources to carry on their work; that at the time work was done in making improvements there were some houses already occupied in Windsor Square, and that both Mr. Owens and Mr. Dinmore had houses, although they were not living in them at that time; that a volunteer crop of hay came up on the premises and that Mr. Owens arranged to have it cut down.

FOREST WHITNEY

Is credit manager for the Republic and Gazette and in such capacity has had business dealings with Owens and Dinmore in regard to advertising concerning Windsor Square; that the Republic and Gazette each have claims filed in these proceedings for an unpaid balance for such advertising, the former for \$957 and the [564] latter in the amount of \$491.60; that the bills for such advertising were paid by Owens and Dinmore and that Owens and Dinmore were dealt with by witness in regard to furnishing advertising as the owners of the property; that in dealing with Owens and Dinmore he had no notice that Mrs. Margaret B. Barringer claimed any lien or mortgage on the premises; that he knew nothing about Mrs. Barringer in connection with the property.

HENRY F. LEIBER

Is a member of the firm of Myers-Leiber Company engaged in outdoor signs and painting; that said Myers-Leiber Company has a claim on file in these proceedings for monies due for sign work and advertising on Windsor Square in the amount of \$247.50; that witness personally handled the dealings in regard to putting up the sign work and advertising with Owens and Dinmore, who were, so far as he knew, the owners; that Mr. Owens represented to him that he was the owner; that at the

(Testimony of Henry F. Leiber.)

time of such representation improvements were being made on Windsor Square, the improvements being in charge of Mr. Owens; that he had no information that Mrs. Barringer claimed any lien on the premises at the time of extending credit; that payments on the work were received from Mr. Owens and Mr. Dinmore; that Owens told him he had bought the property; that Owens did not tell him the property was all paid for; that he knew money was paid into the Phoenix Title & Trust Company and that he made inquiry of a Mr. Barkley of the escrow department of the Phoenix Title & Trust Company, who told him that Owens-Dinmore would pay the bills and that he didn't have to worry about it; that the money would be paid. Witness produced the copy of the signs furnished by his firm on the property which was introduced in evidence as Trustee's Exhibit No. O attached hereto; [565]

(Trustee's Exhibit O in evidence consists of proof for signboard work identified by witness Henry F. Leiber, and consists of four separate orders for sign work on Windsor Square, the first two dated January 15, 1930, the next dated January 24, 1930, and the last being undated, but calling for work to be completed by February 25, 1930, the latter consisting of proof for sign work for auction sale of lots on March 7-8-9, 1930, and containing following statement:

(Testimony of Henry F. Leiber.)

“Phoenix Title & Trust Company Guarantees
Clear Title No Assessments”

also:

“Inspect the Property Now. Every Lot is
plainly Marked. Maps and Information Here”)

that his reason for going to the Phoenix Title & Trust Company to make inquiry was because the signs on the property stated that the Phoenix Title & Trust Company guaranteed the title; that at the time he made inquiry an order had been placed with him for \$1200 worth of signs and he wanted to get an understanding of what the line-up was; that Trustee's Exhibit O, attached hereto, being the proof for the signs to be constructed on the property, was prepared by Mr. Owens and that the signs were constructed by his firm in accordance therewith and placed by the witness personally on Windsor Square.

W. H. NORMAN JR.

Is one of the owners of the Norman Nursery: that the Norman Nursery has a claim on file in these bankruptcy proceedings for \$390.57 (see Exhibit R) for labor and plants put in Windsor Square on the streets and around two houses built by Owens and Dinmore; that the instructions in regard to the work were given to witness at his place of business and also on the tract by Mr. Owens; that Mr. Owens was personally on the tract known as Windsor

(Testimony of W. H. Norman Jr.)

Square at the time the work was done and that the witness also met [566] Mr. Owens in Los Angeles at one time and Owens went with him when witness bought the stock that went into the improvements on Windsor Square; that at the time of the planting of the trees and shrubs at Windsor Square Mr. Owens was overseeing things on the tract; that witness had no knowledge of any claim of lien of Margaret B. Barringer to this property until after the proceedings in bankruptcy when he was told about it by Mr. Owens; that the amount of work done by the Norman Nursery company amounted all together to between \$1400 and \$1500 and that the same was paid for by L. D. Owens except for the balance represented by the claim filed herein in the amount of \$390.57; that he made no examination of the records of Maricopa County to see if any lien was filed; that he rendered a statement for the work done to Owens and Dinmore; that the account of the Norman Nursery Company was for plants, shrubs and trees and for the labor in putting these in.

D. R. WHITNEY.

Is secretary and treasurer of Schmidt-Hitchcock, Contractors; that the firm of Schmidt-Hitchcock has a claim on file in these proceedings for \$125 (See Exhibit R); that the claim is for materials furnished on the grounds of Windsor Square, and that

(Testimony of D. R. Whitney.)

the witness on behalf of Schmidt-Hitchcock dealt with Mr. Owens in contracting for same; that at the time the materials were furnished and labor done by his company witness had no information or knowledge of a claim of lien of Margaret B. Barringer on the premises; that the nature of the work done on the premises was grading and leveling of the streets, the streets being Colter and Camelback; that no payment was received for any of the materials furnished.

GEORGE E. LILLEY,
Trustee in Bankruptcy.

Is the Trustee in Bankruptcy in these proceedings, identified reports filed by him showing expenditures made by him [567] since he qualified as Trustee in Bankruptcy upon the property known as Windsor Square and stated the nature of these expenditures; that item of \$465 was paid to Central Arizona Light & Power Company for line extension and a deposit of \$150 as a credit on the power consumption account; that an item of \$21 was for labor on the tract; that the power extension consisted of an extension of the power line as it existed at the time the premises were taken over by the witness in order to furnish power to consumers who were purchasers of or tenants on lots in Windsor Square tract.

(Testimony of George E. Lilley.)

That other expenditures were paid by him as Trustee in Bankruptcy as follows: Wm. H. Schrader, \$70 for salary as caretaker; same, \$115.10; Henry Brown, labor, \$3.50; power account Central Arizona Light & Power Company April 6, 1931, \$95; April 6th, Arizona Welding Works, labor water pipe line, \$48.75; April 6th, Liefgreen Seed Company, supplies, \$1.50; also paid under order of Court \$100 each to E. E. Lane, L. R. Bailey and Walter Martin, the appraisers appointed by the Bankruptcy Court to appraise the property of the Bankrupt; that he knew each of said appraisers personally; that they were all experienced realtors in Phoenix and particularly well qualified to act as appraisers of the Windsor Square property; that he made further payment of \$91.17 to Wm. H. Schrader, caretaker, on May 5, 1931; that Mr. Schrader was in his employ as Trustee in Bankruptcy of Windsor Square Development, Inc.; that an item of \$69.70 paid on May 5th to Central Arizona Light & Power Company was for operating pump for the purpose of furnishing water to people living in Windsor Square tract, and a further item of \$4.50 paid on May 5th was for repair of a pipe line in connection with the water system in Windsor Square; that a further item of \$71.40 paid on June 5th was for power in connection with operating the water system; that the further item of \$3 on June 5th was for repairing water system in Windsor Square; and that the item of \$95.71 [568]

(Testimony of George E. Lilley.)

on June 5th to Wm. H. Schrader, caretaker, was for labor done on Windsor Square; that an item of \$93.05 on July 6th was for power for pumping water in Windsor Square, and an item for \$94.71 to Wm. H. Schrader, caretaker, to July 6th, was for labor performed on Windsor Square; a further item dated August 4th, \$92.80 was for power for pumping water on Windsor Square; that an item August 4, 1931, of \$174.70 to William Schrader was for labor and material on Windsor Square, being hose purchased for irrigating the trees; and that a further item to Wm. H. Schrader, caretaker, on September 10, 1931, of \$101.81, was for salary and supplies furnished Windsor Square; that the map (being Trustee's Exhibit A in evidence) was a correct map of Windsor Square, having been a map furnished to him by L. D. Owens; that he (witness) had been in possession of the property involved in these proceedings during all the time he had been Trustee in Bankruptcy of the Estate and that no one had questioned his possession during that time; that he knew of a claim of lien made by Mrs. Barringer in the bankruptcy proceedings, but that he did not know the provisions of the purported declaration of trust, as he had never read it; that he had known that Mrs. Barringer was the former owner of the property and had heard that the purchasers had not paid cash at the time they made the purchase; and that by purchasers he referred to Owens and his associates; that the pos-

(Testimony of George E. Lilley.)

session he had taken of the property was under an order of the Court to act as Trustee to administer the estate of the Bankrupt; that he has been in possession of the property the same as he has been in possession of any other property that he has charge of or owns; that he did not claim any right of possession under and by authority of the asserted declaration of trust.

Trustee's Exhibit P in evidence is order confirming sale of real estate dated May 6, 1931, made by Trustee in [569] Bankruptcy to W. L. Greer of lots in Windsor Square at respective prices set opposite description of same:

Lot 38 Block 3, amount	\$877.50
Lot 1 Block 3, amount	\$877.50
Lot 40 Block 2, amount	\$877.50
Lot 10 Block 5, amount	\$607.50
Lot 30 Block 7, amount	\$700.00
Lot 14 Block 7, amount	\$405.00
Lot 15 Block 1, amount	\$405.00
Lot 14 Block 8, amount	\$700.00

Total \$5450.00

Trustee's Exhibit Q in evidence is order confirming sale of real estate, dated June 18, 1931, confirming sale of following numbered lots in Windsor Square to W. L. Greer, by Trustee in Bankruptcy, at respective prices set opposite description:

(Testimony of George E. Lilley.)

Lot 21 Block 8, amount \$875.00

Lot 9 Block 9, amount \$360.00

Lot 20 Block 5, amount \$585.00

 Total \$1820.00

Trustee's Exhibit R. in evidence consists of all the unsecured claims filed against said bankrupt estate except the Barringer proof of claim of lien (Admitted in evidence separately as Trustee's Exhibit E); said claims included in Exhibit R, being as follows:

1. Kibbey-Bennett-Gust-Smith	\$ 295.00
2. Dorris-Heyman Furniture Co.	34.28
3. Arizona Sand & Rock Co.	249.70
4. Norman Nursery	390.57
5. J. P. Atkin	13,500.00
6. F. M. Hill	19,000.00
7. Geo. Bennett	3,000.00
8. Gazette Job Printing Co.	213.15
9. Dwight B. Heard Investment Co.	1,000.00
10. Schmidt-Hitchcock, Contractors,	125.00
11. Arizona Republican	957.00
12. Arizona Republican Engraving Co.	34.79
13. Hamman-McFarlane Lumber Co.	136.65
14. Warner's Delivery Service	17.50
15. Phoenix Gazette	491.60
16. Nick Diamos	500.00
17. Myers-Leiber Paint House	247.50
18. Nancy L. Moale	1,350.00
Maricopa County, tax claim	1,460.92

(Testimony of George E. Lilley.)

Trustee in Bankruptcy made offer in open court to allow Respondent Barringer to amend claim of lien (Trustee's Exhibit E) to show an unsecured debt, same to be in compliance with Bankruptcy Act and General Orders of Supreme Court, and that Trustee would not oppose allowance of such unsecured claim for such amount as Court may find due thereon.

The hearing was concluded on December 18, 1931, at which time it was stipulated by all counsel that the matter should be submitted on briefs, all respondents to have thirty days in which to file opening briefs (but in case transcript of testimony should not be filed within fifteen days from date, then time to be extended to give respondents fifteen days after such filing, in which to file their briefs); the Trustee in Bankruptcy to have thirty days thereafter to file answering brief, and respondents ten days thereafter to file reply briefs, at which time matter to be deemed submitted to the Court. Respondent Phoenix Title & Trust Company filed its brief on January 30th, 1932; Respondent Margaret B. Barringer filed her brief on February 1, 1932; and Trustee in Bankruptcy filed his brief on March 10, 1932. No reply brief being filed, matter was deemed submitted on March 20, 1932, and on Meh. 22, 1932, the Referee rendered his decision fixing and marshalling liens and determining priority thereof and adjudging certain asserted liens null and void, and notified counsel in case.

(Testimony of George E. Lilley.)

Thereafter it was stipulated by counsel, subject to approval by Court, that the entry of the Order and Decree be deferred to a date subsequent to September 15, 1932, the same being for convenience of counsel, and it was so ordered by the Court.

R. W. SMITH

Referee [571]

[Title of Court and Cause.]

CERTIFICATE OF REVIEW ON PETITION
OF MARGARET B. BARRINGER.

To the Honorable F. C. Jacobs,

Judge of the District Court of the United States
for the District of Arizona:

I, R. W. SMITH, one of the Referees of said Court in Bankruptcy, do hereby certify that in the course of the proceedings in said cause before me, the following question arose pertinent to said proceeding:

Was the order of the Referee fixing and marshalling liens, determining priority thereof and adjudging certain asserted liens and interests null and void, erroneous as contrary to law and not justified by the evidence in the following particulars:

(a) In directing the sale of the property described in said order free and clear of all

encumbrances, except as therein specifically set forth, at private sale and in compliance with the order of sale made by the Court on the 18th day of June, 1931?

(b) In not directing the trustee in bankruptcy to surrender any claim in or to the premises described in his petition to marshal liens?

(c) In not directing that the order of sale heretofore made in this proceeding be vacated, or in the alternative that it be established that Margaret B. Barringer has a lien on said premises, and that it be transferred to the proceeds of such sale prior to any lien, charge, or right of any of the persons mentioned in said order, or any person whatsoever?

The errors complained of by the petitioner, Margaret B. Barringer, are set forth in full in her petition to review.

And the said question is certified to the Judge for his opinion thereon. [572]

Accompanying this certificate is a summary of the evidence on which said order was made.

(This Summary of Evidence is also made part of record with Certificate of Review on Petition of Phoenix Title & Trust Company in same matter)

I return herewith as the record the following items:

1. The record book or minutes of this proceeding.

2. The petition on which this certificate is granted.
3. All Exhibits introduced in Evidence.
4. All pleadings and other papers filed with me herein which are pertinent to this review.

This record is also made part of Record with Certificate of Review on Petition of Phoenix Title & Trust Company, in same matter.

Dated at Phoenix, Arizona, this 18th day of November, 1932.

R. W. SMITH
Referee in Bankruptcy

[Title of Court and Cause.]

AMENDED ANSWER OF PHOENIX TITLE
AND TRUST COMPANY TO ORDER TO
SHOW CAUSE OF TRUSTEE'S PETITION
TO MARSHAL LIENS AND SELL FREE
AND CLEAR OF ENCUMBRANCES.

Comes now the Phoenix Title and Trust Company, a corporation, and answers the order to show cause of trustee's petition to marshal liens and sell free and clear of encumbrances, issued by the Honorable R. W. Smith, Referee in Bankruptcy, and published in the Arizona Weekly Gazette on June 27th, July 4th, July 11th and July 18th, 1931, as follows, to wit: [573]

I.

Said Phoenix Title and Trust Company respectfully shows in said answer to order to show cause that on the 17th day of December, 1928, Margaret B. Barringer was the owner in fee simple of

Lots One (1) to Ten (10), inclusive, and Lots Twelve (12) to Eighteen (18), inclusive, Colter Tract, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 6 of Maps, page 35 thereof;

EXCEPT tract 30 feet E. and W. by 25 feet N. and S. in the SE corner of Lot 18 (referred to as Lot 7 in Deed) Colter Tract, as more fully described in that certain deed to the S. R. V. W. U. A., recorded Feb. 20, 1919, in Book 132 of Deeds, page 158, records of Maricopa County, Arizona; and

EXCEPT rights of way for canals, laterals and ditches.

SUBJECT to the liabilities of said property on account of subscription for shares of capital stock of the Salt River Valley Water Users' Association and all the terms and conditions incident thereto and to the 1929 State and County tax liens.

That the premises above described include all of the lots and blocks described in the petition of George E. Lilley, trustee in bankruptcy of the estate of Windsor Square Development, Inc., a cor-

poration, upon which the above mentioned order to show cause is based.

II.

That on or about said 17th day of December, 1928, the said Margaret B. Barringer entered into an agreement with Thomas J. Tunney, the said Thomas J. Tunney acting as the agent and on behalf of L. D. Owens Jr., H. C. Dinmore and S. W. Mills, by which agreement the said Margaret B. Barringer agreed to sell the whole of the above described premises for a total consideration of One Hundred Five Thousand Dollars (\$105,000.00), of which amount [574] Twenty Thousand Dollars (\$20,000.00) was paid to the said Margaret B. Barringer in cash before the recording of the conveyance hereinafter mentioned and the balance, amounting to the sum of Eighty Five Thousand Dollars (\$85,000.00) was agreed to be paid to the said Margaret B. Barrington three years after date, with interest thereon from December 20, 1928, to the maturity of the note at the rate of seven per cent per annum, payable quarterly.

That it was contemplated between the said Margaret B. Barringer and the said purchasers of the above described premises that the balance of the purchase price, to wit, the sum of Eighty Five Thousand Dollars (\$85,000.00), would be paid out of the receipts from the subdivision and sale of lots of said premises, and that the sale of said lots would be made to purchasers in many instances

on contracts of sale with deferred payments, and that in order to facilitate the subdivision and platting of the said premises and the selling of the same in lots and parcels, and executing contracts of sale and conveyances thereof to the purchasers, and paying the expenses of said sales and dividing such proceeds between the purchasers and the seller to apply on the payment of the balance of the purchase price, it was agreed by and between said seller and purchasers, said Thomas J. Tunney acting as agent for said purchasers, that the seller would convey said property by a warranty deed to said Phoenix Title and Trust Company, a corporation, upon the agreement with said Phoenix Title and Trust Company that said company would hold the title in trust for the benefit of the said Margaret B. Barringer, and the said Thomas J. Tunney, and his assignees, and would manage and handle said property and cause the same to be subdivided and platted, and cause separate lots and parcels therein agreed to be sold by contracts of sale or conveyed to purchasers thereof. [575]

That in pursuance of said agreement the said Margaret B. Barringer conveyed the above described property by warranty deed to said Phoenix Title and Trust Company, trustee, which deed is dated December 17, 1928, and was recorded in the office of the County Recorder of Maricopa County, Arizona, on January 14, 1929, in Book 228 of Deeds, at page 515. That at the time of the said conveyance by said deed, and as a part of the same trans-

action, a promissory note was executed and delivered by the said Thomas J. Tunney to the said Margaret B. Barringer, of which note the following is a copy, to wit:

(Here follows copy of Respondent Barringer's Exhibit No. 3 in evidence, which appears, *infra*, page 189).

and that likewise as a part of the same transaction as the conveyance above mentioned and the promissory note above mentioned, an agreement between said Phoenix Title and Trust Company, grantee in said deed, was entered into with the said Thomas J. Tunney, the said Thomas J. Tunney acting on behalf of his assignees hereinafter mentioned, which said agreement was assented to by the said Margaret B. Barringer, who became a party thereto, and is set forth in a certain declaration of trust dated the 9th day of January, 1929, and approved by the said Thomas J. Tunney on the 9th day of January, 1929, and approved and assented to by the said Margaret B. Barringer on the 5th day of January, 1929, but not delivered until the 14th day of January, 1929, on which said date the above mentioned deed and note were also delivered, and said deed was recorded in the office of the County Recorder of Maricopa County, Arizona. That the following is a copy of the declaration of trust above referred to:

(Here follows copy of Respondent Barringer's Exhibit No. 2 in evidence, which appears, *infra*, page 423). [576]

That thereafter, to-wit, on the 11th day of January, 1929, the said Thomas J. Tunney, a bachelor, assigned, set over and transferred all of his interest in the foregoing declaration of trust and in the property therein described to

- L. D. Owens, Jr., an undivided 5/6 interest;
- H. C. Dinmore, an undivided 1/8 interest;
- S. W. Mills, an undivided 1/24 interest;

being all of the interest of said Thomas J. Tunney in said declaration of trust and in said property, and that said assignment was duly accepted by said Phoenix Title and Trust Company on the 14th day of January, 1929.

III.

That thereafter the said Phoenix Title and Trust Company, the said Margaret B. Barringer, and the said L. D. Owens Jr., H. C. Dinmore and S. W. Mills duly made and executed a modification of the aforesaid declaration of trust, of which said modification the following is a copy, to wit:

“MODIFICATION OF DECLARATION OF TRUST.

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, under date of January 9, 1929, the Phoenix Title and Trust Company issued its Declaration of Trust No. 418; and

WHEREAS, subsequently thereto the interest of Thomas J. Tunney as Beneficiary under said Declaration of Trust was assigned to L.

D. Owens, Jr., H. C. Dinmore and S. W. Mills;
and

WHEREAS, Margaret B. Barringer, Payee under said Declaration of Trust and the present Beneficiaries under said Declaration of Trust desire to modify a portion of "Section Two" thereof;

NOW, THEREFORE, the provisions of "Section Two" of the aforementioned Declaration of Trust are hereby modified to read as follows:

SECTION TWO.

TO RECEIVE PAYMENTS FOR, deed and convey the real property covered hereby in lots or parcels upon such terms, and for such prices, as said Trustee may be instructed, in writing, so to do by said Beneficiary: [577]

PROVIDED the said prices thereof shall be not less than those hereafter to be agreed upon by said Trustee and the Beneficiary hereunder, and indicated on Schedule or Schedules of Sales Prices, to be marked "Exhibit A", "Exhibit A-1", "Exhibit A-2", etc., consecutively, as the case may be, and to be attached hereto and then to be a part hereof, the same as though attached hereto at the signing of this Instrument; provided further that said sale prices shall aggregate a sum not less than Two Hundred Fifty Thousand Dollars (\$250,000.00)

PROVIDED, ALSO, the minimum terms of each aforesaid sale shall be as follows:

(a) Not less than 10% of the sales price in cash at the time of entering into a Sales Agreement.

(b) The balance of such sales price to be paid in monthly, quarterly, semi-annual or annual payments.

IN WITNESS WHEREOF, the Phoenix Title and Trust Company has caused its corporate name to be hereunto subscribed, its corporate seal to be hereunto affixed and these presents to be executed by its Vice-President and Secretary thereunto duly authorized, this 4th day of April, A. D. 1929.

PHOENIX TITLE AND
TRUST COMPANY,

(Signed) By Thos Clements,
Vice President

(Signed) Attest: L. J. Taylor,
[Corporate Seal] Secretary

The foregoing Modification of Declaration of Trust was made at the request of the undersigned and the same is hereby approved, ratified and confirmed.

(Signed) Margaret B. Barringer,
Payee.

(Signed) Len D. Owens, Jr.,

(Signed) S. W. Mills,

Beneficiaries.”

IV.

That thereafter, to wit, on or about the 4th day of June, 1930, the said L. D. Owens, Jr., H. C. Dinmore and S. W. Mills, joined by their respective wives, duly assigned, set over [578] and transferred all of their right, title and interest in said trust and the property covered thereby to Windsor Square Development, Inc., a corporation, and that said assignment was duly accepted by said Phoenix Title and Trust Company on the 5th day of June, 1930.

V.

That thereafter, to wit, on or about the 24th day of October, 1930, the said Windsor Square Development, Inc., a corporation, duly assigned, set over and transferred all of its interest in and to the aforesaid declaration of trust and the property therein described to L. D. Owens, Jr., and that said assignment was duly accepted by the Phoenix Title and Trust Company on the 24th day of October, 1930.

VI.

That thereafter, to wit, on or about the 25th day of October, 1930, the said Len D. Owens, Jr., joined by his wife, assigned, set over and transferred unto Windsor Square Development, Inc., all his right, title and interest in and to the aforesaid declaration of trust and the property therein described, excepting the following described lots, to wit:

Lots 1, 14, 15, 17 and 20, Block 1; Lots 1, 25, 35, 37 and 40, Block 2; Lots 1, 21, 31 and 38, Block 3; Lots 1, 4, 5, 6, 10, 18, 22 and 23, Block 4; Lots 1, 2, 4, 10, 12, 20 and 21, Block 5; Lots 4 and 11, Block 6; Lots 24, 28 and 30, Block 7; Lots 14, 16, 21, 24, 25, 26, 27, 29, 31 and 45, Block 8; Lots 2, 9, 23, 24, 25, 26 and 27, Block 9; all in Windsor Square.

VII.

That from and after the 19th day of January, 1929, the said Phoenix Title and Trust Company, a corporation, has been actively engaged in the performance of its duties as trustee and has continued in the performance of said duties up to the present time, and is now engaged in the performance thereof, and [579] that since the 19th day of January, 1929, said Phoenix Title and Trust Company has enjoyed and exercised the powers, privileges and emoluments, which it is provided it shall exercise, use and enjoy under the terms of said declaration of trust, and that said Phoenix Title and Trust Company is now using and enjoying such powers, privileges and emoluments; that all moneys to which said Phoenix Title and Trust Company is entitled for service that it has performed in accordance with said declaration of trust up to the present time have been fully paid out of the proceeds coming into its hands as in said declaration of trust provided.

VIII.

That certain payments of principal and interest upon the note of the said Margaret B. Barringer above set forth have been made, but that a large part of the principal of said note remains unpaid, and there is accrued on said note a considerable amount of interest, and that said note is now past due, and default has been made in the payment of installments agreed to be paid on said note.

IX.

That by reason of the foregoing facts the Phoenix Title and Trust Company, a corporation, is the legal owner of the premises described in the above mentioned order to show cause, and holds the title to said premises in trust for the purposes and for the benefit of the parties specified in the declaration of trust above set forth as modified by the modification of said declaration of trust above mentioned, and that the said Windsor Square Development, Inc., a corporation, at the time its petition in bankruptcy was filed in this court, or at any time before or after such petition in bankruptcy was filed, was not the owner or holder of the legal title to the premises described here- [580] inbefore, but was merely the owner of a beneficial interest in certain of the property described in the declaration of trust above set forth, and that upon the adjudication in bankruptcy of the said Windsor Square Development, Inc., the trustee in bankruptcy duly appointed and qualified in this matter

obtained only the beneficial interest in such of the lots and blocks described in said declaration of trust, as had been duly and legally assigned to the said Windsor Square Development, Inc., at the time the petition in bankruptcy was filed in this cause, or as may thereafter have been assigned to said Windsor Square Development, Inc.

X.

That by reason of the foregoing facts the Phoenix Title and Trust Company has an interest in the lots and blocks described in the order to show cause issued by the Referee in Bankruptcy in this matter, and has a right to carry out the said declaration of trust in accordance with the terms thereof and the said George E. Lilley as trustee in bankruptcy is vested only with the equitable or beneficial interest in said lots and blocks that was vested in the said Windsor Square Development, Inc., a corporation, prior to its filing its petition in bankruptcy.

XI.

That the legal title to the above described premises was conveyed to said Phoenix Title and Trust Company on the trust set forth in the above mentioned declaration of trust, and said declaration of trust was executed for the purpose of authorizing the said Phoenix Title and Trust Company to carry out the provisions of said declaration of trust for the benefit of the [581] beneficiaries of the trust, and that said trust was created by said parties as a means of protecting and preserving their inter-

ests in or liens upon said property, and that said Phoenix Title and Trust Company is charged with the active duty of protecting and preserving the rights of all of said parties in accordance with the terms of said declaration of trust, and that it is not within the power of a court in bankruptcy to set aside said declaration of trust and thereby prejudice the claim of said Margaret B. Barringer to the proceeds of said property or to change her rights to the payment of her note out of said property to some other or different method than that to which was agreed to between her and the said Thomas J. Tunney in the aforesaid declaration of trust.

XII.

That under and pursuant to the declaration of trust hereinabove set forth various contracts of sale of lots in said Windsor Square Tract have been sold under contracts of sale and various of said lots have been sold and conveyed by deed, and that the interests of the beneficiaries of said declaration of trust in various of said contracts of sale have been assigned and set over to parties who are not before this court in this proceeding. That many of the sales made of lots in said tract, and many of the contracts of sale, have been recognized and approved by the trustee in bankruptcy herein, and that said trustee in bankruptcy has received a part of the proceeds received from many of said contracts of sale, and that the purchasers of said lots, and the holders of contracts of sale of said lots, and the assignees of the interest of the beneficiaries

under said trust, are entitled to be protected in their respective interests by whatever order may be entered by the court herein. [582]

XIII.

That said Phoenix Title and Trust Company, by reason of the issuance of the above mentioned order to show cause, has been obliged to employ an attorney and to agree to pay a reasonable attorney's fee for filing this answer to the above mentioned order to show cause.

WHEREFORE, said Phoenix Title and Trust Company, a corporation, prays that the above mentioned declaration of trust may be recognized by this Honorable Court, and that it be declared that the administration and disposition of the estate of said bankrupt include only the beneficial interest of the said Windsor Square Development, Inc., in and to said declaration of trust, and to such property covered thereby as has been assigned to it, or to which it has otherwise rightfully succeeded, and that the said George E. Lilley, as trustee in bankruptcy, be directed in his administration of said trust to recognize said declaration of trust in all respects according to the terms thereof, and that such other and further orders may be entered as is proper in the premises including a reasonable allowance to said Phoenix Title and Trust Company for attorney's fees, and for its costs.

KIBBEY BENNETT GUST SMITH
& ROSENFELD

Attorneys for Defendant

Phoenix Title and Trust Company.

State of Arizona,
County of Maricopa—ss.

J. L. GUST, being first duly sworn, upon oath deposes and says:

That he is one of the attorneys for the PHOENIX TITLE AND TRUST COMPANY, the corporation which has made the above and foregoing amended answer to order to show cause referred to therein; that affiant has read said amended answer, and that the matters [583] and things therein stated are true to the best of his knowledge and belief.

J. L. GUST

Subscribed and sworn to before me this 16th day of October, 1931.

ETHOL FROST

[Seal]

Notary Public

My commission expires Feb. 28-1932.

10/19/31

Received copy this day.

THOMAS W. NEALON

Atty. for Trustee

By Joseph M. Nealon.

ELLINWOOD & ROSS

By Norman S. Hull

Filed Oct. 19, 1931. R. W. Smith, Referee.

[Title of Court and Cause.]

MOTION TO STRIKE OUT REDUNDANT AND
IMPERTINENT MATTER FROM AMEND-
ED ANSWER OF PHOENIX TITLE AND
TRUST COMPANY TO ORDER TO SHOW
CAUSE ON TRUSTEE'S PETITION TO
MARSHAL LIENS AND SELL.

COMES NOW GEORGE E. LILLEY, Trustee in Bankruptcy, of the estate of Windsor Square Development, Inc., a corporation, bankrupt, and moves the court that an order be entered herein, requiring the Phoenix Title and Trust Company, a corporation, to strike out the following portions of the Amended Answer of said Phoenix Title and Trust Company, a corporation, to the Order to Show Cause on Trustee's Petition to Marshal Liens and Sell Free and Clear of Encumbrances, heretofore filed herein, for the respective reasons hereinafter stated: [584]

1. That portion of Paragraph XI of said Amended Answer of said Phoenix Title and Trust Company, a corporation, reading as follows:

“And that it is not within the power of a court in bankruptcy to set aside said declaration of trust and thereby prejudice the claim of said Margaret B. Barringer to the proceeds of said property or to change her rights to the payment of her note out of said property to some other or different method than that to which was agreed to between her and the said

Thomas J. Tunney in the aforesaid declaration of trust.”

for the reason that said matter is wholly redundant and not pertinent to any issues raised in this proceeding and is merely the statement of a legal conclusion.

2. That portion of Paragraph XIII of said Amended Answer of said Phoenix Title and Trust Company, a corporation, reading as follows:

“That said Phoenix Title and Trust Company by reason of the issuance of the above mentioned order to show cause has been obliged to employ an attorney and to agree to pay a reasonable attorney’s fee for filing this answer to the above mentioned order to show cause.”

for the reason that the same constitutes redundant and impertinent matter, not material to any of the issues raised in this proceeding.

3. That portion of the Prayer following Paragraph XIII of said Amended Answer of said Phoenix Title and Trust Company, a corporation, reading as follows:

“And that it be declared that the administration and disposition of the estate of said bankrupt include only the beneficial interest of the said Windsor Square Development, Inc., in and to said declaration of trust, and to such property covered thereby as has been assigned to it, or to which it has otherwise rightfully succeeded, and that the said George E. Lilley

as trustee in bankruptcy, be directed in his administration of said trust to recognize said declaration of trust in all respects according to the terms thereof.

* * * * *

[585]

“Including a reasonable allowance to said Phoenix Title and Trust Company for attorney’s fees, and for its costs.”

for the reason that the same constitutes redundant and impertinent matter, and that the relief prayed for is not within any of the issues raised in this proceeding.

Dated this 23rd day of November, 1931.

THOMAS W. NEALON

Attorney for George E. Lilley,
trustee in bankruptcy of the
estate of Windsor Square De-
velopment, Inc., a corporation,
bankrupt.

Received copy of the within, this 23 day of
November, 1931.

KIBBEY, BENNETT, GUST.
SMITH & ROSENFELD

Attorneys for Phoenix Title
and Trust Company.

Filed Nov. 23, 1931, R. W. Smith, Referee.

[Title of Court and Cause.]

MOTION FOR FURTHER AND BETTER PARTICULARS OF AMENDED ANSWER OF PHOENIX TITLE AND TRUST COMPANY, A CORPORATION.

Comes now GEORGE E. LILLEY, Trustee in Bankruptcy, of the estate of Windsor Square Development, Inc., a corporation, bankrupt, and moves this court, pursuant to the provisions of Equity Rule Number 20, that the said Phoenix Title and Trust Company, a corporation, be ordered to furnish further and better particulars of the matters stated in the Amended Answer of the said Phoenix Title and Trust Company, to the Order to Show Cause on Trustee's Petition to Marshal Liens and Sell the Property Free and Clear of Encumbrances filed herein on the 19th day of October, 1931, in the following respects:

1. That said Phoenix Title and Trust Company set up with particularity, all moneys which have been paid to it, from and after the adjudication of bankruptcy herein on the 25th day of October, 1930, out of the proceeds coming into its hands through, or under, an alleged Declaration of Trust, together with [586] a full and complete statement of all the amounts received and disbursed by it since the date of said adjudication in bankruptcy in connection with, or by reason of, an alleged Declaration of Trust as set forth in Paragraph VII of its Amended

Answer to the Order to Show Cause filed herein, as aforesaid.

2. As to all payments alleged to have been made and all amounts alleged to be due and unpaid upon a certain note of Margaret B. Barringer, as set forth and alleged in Paragraph VIII of the Amended Answer of the said Phoenix Title and Trust Company to the Order to Show Cause on Trustee's Petition to Marshal Liens and Sell Free and Clear of Encumbrances filed herein, as aforesaid.

And the said George E. Lilley, Trustee as aforesaid, further moves that an Order be entered that the said Phoenix Title and Trust Company, a corporation, file such particulars and serve upon the said George E. Lilley, Trustee as aforesaid, a copy of the same, within 10 days after the entry of said Order.

Dated this 23rd day of November, 1931.

THOMAS W. NEALON

Attorney for George E. Lilley,
Trustee in Bankruptcy of the
Estate of Windsor Square De-
velopment, Inc., a corporation,
Bankrupt.

Received copy of the within, this 23 day of November, 1931.

KIBBEY, BENNETT, GUST,
SMITH & ROSENFELD

Attorney for Phoenix Title
and Trust Company.

Filed Nov. 23, 1931, R. W. Smith, Referee.

[Title of Court and Cause.]

EXCEPTIONS OF PHOENIX TITLE AND TRUST COMPANY TO ORDER AND DECREE FIXING AND MARSHALLING LIENS, DETERMINING PRIORITY THEREOF AND ADJUDGING CERTAIN ASSERTED LIENS, AND INTERESTS NULL AND VOID, MADE AND ENTERED BY R. W. SMITH, REFEREE, ON SEPTEMBER 17, 1932.

Comes now the Phoenix Title and Trust Company, of Phoenix, Arizona, a creditor of the above named bankrupt, and the [587] holder of an interest in and to the real estate ordered to be sold free and clear of all liens and interests, described in the order and decree of the referee hereinabove mentioned, and a party to the proceedings resulting in said order, and files the following exceptions to certain findings of fact and conclusions of law contained in the order and decree made and entered by R. W. Smith, Referee, on September 17, 1932, entitled, "Order and Decree Fixing and Marshaling Liens, Determining Priority Thereof and Adjudging Certain Asserted Liens, and Interests Null and Void", and to the making and entering of said order and decree, to-wit:

I.

That the provision in said order by which it is adjudged and decreed that said Trustee in Bank-

ruptcy is directed to sell, free and clear of all encumbrances, except certain encumbrances specially set forth, at private sale, and in compliance with the order of sale made by the Referee on the 18th day of June, 1931, certain lots in Windsor Square Addition in said Order and decree described, is not justified by the evidence and is contrary to the law.

II.

That the provision in said order and decree by which it is adjudged and decreed that said Trustee in Bankruptcy is directed to sell, free and clear of all encumbrances, except certain encumbrances specially mentioned in said order, at private sale, and in compliance with the order of sale made by the referee on the 18th day of June, 1931, certain lots in Windsor Square, in said order described, is contrary to the evidence received by the referee, for the reason that the Declaration of Trust, Respondent Barringer's Exhibit No. 2, and all of the other evidence in the case, including that set forth in the transcript of the reporter's notes, shows beyond question that the legal title to the property ordered sold is vested in the Phoenix Title and Trust Company, [588] Trustee, and that respondent Margaret B. Barringer, has a lien on said property under the provisions of said Declaration of Trust, and that the Phoenix Title and Trust Company has duties to be performed in connection with said trust, and an interest in said premises, and that

the only property interest that was vested in the bankrupt when the petition in bankruptcy was filed, and is now vested in the trustee, is the beneficial interest under said Declaration of Trust which is held by the Trustee in Bankruptcy, subject to the terms of said Declaration of Trust.

III.

That the following conclusion of law contained in said order and decree, to-wit:

“That the property described in the petition of the trustee in bankruptcy herein should be sold and all liens upon or claims against the same should be transferred to the proceeds thereof in the order and amounts hereinabove determined and set forth”.

is contrary to the law, for the reason that from the evidence in the case, including the Declaration of Trust, Respondent Barringer's Exhibit No. 2, and the note of Thomas J. Tunney to Respondent Margaret B. Barringer, Respondent Barringer's Exhibit No. 3, and from the transcript of the reporter's notes of the evidence taken of the proceedings, it conclusively appears that the Trustee does not have the title to said property, but has only a beneficial interest under said Declaration of Trust, and that the respondent, Phoenix Title and Trust Company has an interest in said property, and the defendant, Margaret B. Barringer, has a valid lien thereon under the terms of said Declaration of Trust.

IV.

That the following conclusion of law, made by the referee in said order and decree, to-wit: [589]

“That the Phoenix Title and Trust Company had a contract with the predecessors in interest of the petitioner for the rendition of services to be performed by it in the future for their benefit; that said contract did not run with the land and terminated prior to or upon the adjudication in bankruptcy herein and no claim for any damages for the breach thereof has been filed in this bankruptcy proceedings within the time required by law.”

is contrary to the law, for the reason that the contract referred to in said conclusion in the Declaration of Trust in evidence as Respondent Barringer's Exhibit No. 2, and that said Declaration of Trust did not terminate prior to or upon the adjudication in bankruptcy. There is no evidence whatever showing any such termination, and the evidence in the record shows that the Trustee in Bankruptcy, and the Referee, has recognized the existence of said trust after the bankruptcy.

V.

That the following conclusion of law contained in said order and decree, to-wit:

“That neither Margaret B. Barringer nor the Phoenix Title and Trust Company hold any lien against, or interest in the property involved in this proceeding, but that said Margaret B. Barringer is entitled to repayment of

the amount of One Thousand Nine Hundred Fifty-seven Dollars and Ninety-three cents (\$1,957.93) advanced by her for the preservation of said property as hereinabove set forth, out of the proceeds of the sale of said property”;

is contrary to the law for the reason that it appears from the record evidence in the case that Respondent, Margaret B. Barringer was the owner and holder of the legal and equitable title to the property described in said order, and conveyed the same by valid conveyance to Respondent Phoenix Title and Trust Company, and that Respondent Phoenix Title and Trust Company at all times since has been the owner and holder of said property subject to the terms of the Declaration of Trust, being Respondent Barringer’s Exhibit No. 2. [590]

VI.

That the following finding of fact made by the Referee in said order and decree, to-wit:

“That numerous creditors hold unsecured claims against said bankrupt estate, (which claims have been filed and allowed therein), who had no actual notice of any asserted claim of lien against the property by Margaret B. Barringer or the Phoenix Title and Trust Company.”

is contrary to the law, and is not justified by the evidence for the reason that said creditors claims

were not incurred while the bankrupt was the owner of the property or in possession of the property, and it appears from the undisputed testimony that the bankrupt acquired its interest in the property which is now vested in the Trustee in Bankruptcy on the day that the petition for adjudication was filed, and did not have any possession whatever of said property prior to said date, so that the claims referred to in said finding cannot have been incurred in reliance upon any apparent ownership of said property by the bankrupt.

VII.

That the following finding of fact made by the Referee in said order and decree, to-wit:

“That the respondent’s Margaret B. Barringer and Phoenix Title and Trust Company permitted the bankrupt and its predecessors in interest to exercise dominion over, retain possession of and hold themselves out to the public in general and numerous creditors in particular as the owners of the property known as Windsor Square, and which embraced all of the property described in the petition of the trustee in bankruptcy herein, and that in reliance thereon credit was extended to the bankrupt and its predecessors in interest by creditors whose claims have not been paid, and which claims have been filed and allowed in the bankruptcy proceedings,”

is not justified by the evidence. That part of said finding which declares that Margaret B. Barringer and Phoenix Title and Trust Company permitted the bankrupt and its predecessors in interest to hold themselves out to the public in general and [591] numerous creditors in particular, as the owners of said property, is contrary to the evidence. That part of said finding to the effect that credit was extended to the bankrupt in reliance on the alleged holding out of said bankrupt as the owner thereof is contrary to the record facts, which show that the bankrupt had no interest whatever in the property nor any part thereof until the day the petition for adjudication was filed, and that the claims allowed against the bankrupt estate are all claims that were not incurred by the bankrupt, but were assumed by the bankrupt in the assignment made to it on the day the petition in bankruptcy was filed, and said assignment expressly recognized the rights of respondent Phoenix Title and Trust Company in said property under the Declaration of Trust and transferred only to the bankrupt the beneficial interest in the property, subject to the terms of said Declaration of Trust.

VIII.

That the following provision in said order and decree, to-wit,

“That the only liens existing against the property described in the petition of the Trustee in Bankruptcy herein, and their respective order

and amounts, and the conditions of each of same, and the only interests of the various other respondents in said property, and the only claims against the proceeds thereof are specifically set forth as follows,"

is contrary to the evidence in the cause and to the law, in that it fails to include in the lists of claims and interests that follows said provision the right, title and interest of the Phoenix Title and Trust Company, as Trustee under the Declaration of Trust received in evidence as respondent Barringer's Exhibit No. 2, and the lien of Margaret B. Barringer on the note executed by Thomas J. Tunney, and declared to be a first lien on said property under said Declaration of Trust. [592]

IX.

That the following provision of said order and decree, to-wit,

"That no instrument creating or purporting to create a lien upon the property involved in this proceeding in favor of any respondent herein, or of anyone else, save and except those liens hereinabove specifically set forth, has ever been recorded in the public records of Maricopa County, Arizona",

is wholly immaterial and irrelevant, and has no proper place in said order and decree, for the reason that it appears that the record title of the property was not in the bankrupt, but in Phoenix Title and

Trust Company, so that all persons were charged with notice of whatever rights the Phoenix Title and Trust Company might have, and further, for the reason that the bankrupt acquired the interest in the property which the Trustee in Bankruptcy now has on the day the petition for adjudication of bankruptcy was filed, and the claims of creditors which have been allowed were based upon the assumption of said claims by the assignment made on said day to said bankrupt, and said assignment expressly recognized the rights of the Phoenix Title and Trust Company and the lien of Margaret B. Barringer.

X.

That the said order and decree is contrary to the law and is not sustained by the evidence received by the Referee at the hearing, and that numerous recitals and provisions therein are contrary to the law, for the reason that said recitals and provisions are based upon the theory that the bankrupt was the owner of the property described in said order and decree, and that the respondent Phoenix Title and Trust Company had no interest therein, and that the lien of respondent Margaret B. Barringer was void because not recorded, when the undisputed evidence in the case shows that the record title was in respondent Phoenix Title [593] and Trust Company, and that the title of said Phoenix Title and Trust Company was subject only to the provisions of the Declaration of Trust in evidence in the case

as respondent Barringer's Exhibit No. 2, and that the bankrupt had no interest whatever in said property because the benefits and privileges therein contained, by assignment executed on the day the petition for adjudication in bankruptcy was filed by persons who had acquired by assignment the interest of an original beneficiary under said Declaration of Trust.

XI.

That said order and decree deprives the respondent, Phoenix Title and Trust Company, and the respondent, Margaret B. Barringer, who claims under the Declaration of Trust issued by respondent, Phoenix Title and Trust Company, of their property without due process of law, in that said order and decree by no process of reasoning recognized by any system of jurisprudence takes from said respondents the property ordered to be sold by said order, and gives the same without any payment whatsoever therefor to persons who have no legal, equitable or moral claim thereto.

Dated this 29th day of September, 1932.

PHOENIX TITLE AND
TRUST COMPANY,

Respondent.

By KIBBEY, BENNETT, GUST,
SMITH & ROSENFELD
J. L. GUST

Attorneys for Respondent
201 Professional Building,
Phoenix, Arizona.

We hereby acknowledge notice of the filing with the Referee of the above Exceptions to Order and Decree, and hereby admit and acknowledge that we have this day received a copy of said exceptions.

Dated September 29, 1932. [594]

THOMAS W. NEALON

ALICE M. BIRDSALL

Attorneys for George E. Lilley,
Trustee in Bankruptcy.

Filed Sept. 29, 1932, 2:30 P. M. R. W. Smith,
Referee.

[Title of Court and Cause.]

PETITION OF PHOENIX TITLE AND TRUST
COMPANY TO REVIEW ORDER AND DE-
CREE FIXING AND MARSHALLING
LIENS, DETERMINING PRIORITY
THEREOF AND ADJUDGING CERTAIN
ASSERTED LIENS, AND INTERESTS
NULL AND VOID, MADE AND ENTERED
BY R. W. SMITH, REFEREE, ON SEP-
TEMBER 17, 1932.

To R. W. SMITH, Esq., Referee in Bankruptcy:

Your petitioner respectfully shows that it is a creditor of and the holder of an interest in and to the real estate ordered to be sold free and clear of all liens and interests and described in the order and decree of the Referee hereinafter mentioned,

and that said petitioner was duly made a party to the proceedings resulting in the said order and decree, and said petitioner duly filed its answer to the order to show cause issued in said proceedings, and set up its claim and interest to said property in said order to show cause, and that its said claim and interest in and to said property is by said order and decree determined to be null and void.

That in the course of the above mentioned proceeding, on the 17th day of September, 1932, a certain order and decree, entitled, "Order and Decree Fixing and Marshalling Liens, Determining Priority Thereof and Adjudging Certain Asserted Liens, and Interests Null and Void", was made, entered and filed by R. W. Smith, Esq., Referee; that a copy of said order and decree is hereto annexed and made a part hereof. That such order and decree was and is erroneous in the following respects, to-wit: [595]

1.

That said order and decree is erroneous in the respect that the following provision therein contained is not justified by the evidence and is contrary to the law, to-wit:

"IT IS FURTHER ORDERED, adjudged and decreed that said Trustee in Bankruptcy, George E. Lilley, is directed to sell free and clear of all encumbrances, except as hereinabove specifically set forth, at private sale and in compliance with the order of sale heretofore

on the 18th day of June, 1931, made by this court, the property described in said petition filed herein as follows:

The following lots in Windsor Square, according to the Map or Plat of said Windsor Square, recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 20 of Maps at page 37 thereof;

(Here again follows identical schedule of blocks and lots listed in Trustee's Petition to Marshal Liens and Sell Property Free and Clear of Encumbrances, which appears ante page 170).

and that the liens upon and/or claims against said property as hereinabove determined and set forth are transferred to the proceeds of such sale in the manner, order and for the amounts as so hereinabove determined and set forth''.

That the aforesaid provision of said order is erroneous for the reason that it was made to appear from the answer of the petitioner, Phoenix Title and Trust Company, filed to the order to show cause and from the uncontradicted evidence received by the referee at said hearing, and particularly from the Declaration of Trust issued by the Phoenix Title and Trust Company as the holder of the legal title of said property, dated the 9th day of January, A. D. 1929, and approved by endorsement thereon of all persons interested in said property legally or equitably, which said Declaration of

Trust, together with said endorsement thereon is in evidence as Exhibit No. 2, that the Trustee in Bankruptcy is not the owner of and is not in possession [596] of and is not entitled to the possession of the real property described in the above provision of said order and decree, but that the legal owner and holder of the said real property is your petitioner, Phoenix Title and Trust Company, and the interest of the said George E. Lilley, as Trustee in Bankruptcy in said property is merely the beneficial interest vested by said Declaration of Trust in the beneficiary mentioned in said trust, and passed by mesne assignments to the bankrupt, and that the above mentioned provision of said order and decree by purporting to adjudicate that the petitioner has no claim or interest in said property and in directing said property to be sold as is in said provision directed, disregards the rights of petitioner as the legal owner and holder of said real property, and assumes to sell said property as if said Trustee were the legal and sole owner thereof instead of merely the beneficial interest in said property which was vested in the bankrupt, and is now vested in the trustee, subject to the provisions of said Declaration of Trust and the supplements thereto, all of which are in evidence.

II.

That the said provision of the above mentioned order and decree which is set forth in paragraph numbered I of this petition is erroneous in the

respect that it appears from the undisputed evidence in the case, and particularly from the Declaration of Trust issued by the Phoenix Title and Trust Company, dated the 9th day of January, A. D. 1929, received in evidence at said hearing, and being respondent Barringer's Exhibit No. 2, in the record of said hearing, that the Trustee in Bankruptcy is not the owner of nor in possession of, nor entitled to the possession of the property described in the above mentioned provision of said order and decree, but has merely a qualified possession of said premises under the terms of the above mentioned [597] Declaration of Trust, and that it appears from the undisputed evidence in the case that the note executed by Thomas J. Tunney, to Margaret B. Barringer, received in evidence on said proceeding, being respondent Barringer's Exhibit No. 3, introduced at said hearing, remains in part unpaid, and that default in payment has been made, and together with accumulation of interest, and other charges, on November 5th, 1930, amounted to over Seventy-five Thousand (\$75,000.00) Dollars, and that it further appears from the undisputed evidence in the case, and particularly from the above mentioned Declaration of Trust that the lien of the said Margaret B. Barringer is a valid lien against the interest of the bankrupt in said property, and that said Margaret B. Barringer is entitled to foreclose the lien created by the Declaration of Trust on said property to secure the payment of said note, and that it appears from the

undisputed evidence in the case that if said note is a valid charge on said property, there is no equity in the property for the general creditors of the bankrupt, and the said Margaret B. Barringer should be allowed to proceed with the foreclosure of said lien, or said property should be turned over to the said Margaret B. Barringer as having no value for the general creditors of the bankrupt.

III.

That the above mentioned order and decree is erroneous in the respect that in Paragraph XXI thereof, the said R. W. Smith, Esq., Referee, makes the following conclusion of law:

“That the property described in the petition of the trustee in bankruptcy herein should be sold and all liens upon or claims against the same should be transferred to the proceeds thereof in the order and amounts hereinabove determined and set forth.”

for the reason that the property referred to in said provision is the same property as that described in Paragraph numbered I hereinabove, and that said conclusion of law is erroneous for the [598] reasons set forth in Paragraphs numbered I and II hereinabove.

IV.

That said order and decree is erroneous in the respect that in Paragraph XX thereof, the said referee makes the following conclusion of law:

“That the Phoenix Title and Trust Company had a contract with the predecessors in interest of the petitioner for the rendition of services to be performed by it in the future for their benefit; that said contract did not run with the land and terminated prior to or upon the adjudication in bankruptcy herein and no claim for any damages for the breach thereof has been filed in this bankruptcy proceedings within the time required by law.”

That said conclusion of law is erroneous for the reason that the contract referred to in said provision is the contract contained in the declaration of trust issued by the Phoenix Title and Trust Company on the 9th day of January, 1929, received in evidence in this proceeding, and being respondent Barringer's Exhibit No. 2, in the record of said proceeding, and that it appears that said contract was originally with Thomas J. Tunney, and was assigned by several mesne assignments, finally to the bankrupt, and it further appears that R. W. Smith, Esq., in his decision and order aforesaid, has recognized and approved everything done under and in pursuance of said Declaration of Trust by the Phoenix Title and Trust Company prior to the filing of the petition in bankruptcy, and that the trustee in bankruptcy, with the approval of said Referee, has approved the acts done by said Phoenix Title and Trust Company in pursuance of said Declaration of Trust since said bankruptcy, and

that the conclusion of said referee that said contract terminated prior to or upon the adjudication in bankruptcy herein, is not the law.

V.

That the said order and decree is erroneous in the respect that the Referee, in Paragraph XV thereof, makes the following conclusion of law: [599]

“That neither Margaret B. Barringer nor the Phoenix Title and Trust Company hold any lien against, or interest in the property involved in this proceeding, but that said Margaret B. Barringer is entitled to repayment of the amount of One Thousand Nine Hundred Fifty-seven Dollars and Ninety-three cents (\$1,957.93) advanced by her for the preservation of said property as hereinabove set forth, out of the proceeds of the sale of said property.”

That said conclusion of law is erroneous for the reason that said Margaret B. Barringer and Phoenix Title and Trust Company do have and hold a lien upon or interest in the property ordered to be sold by said order and decree, and as particularly described in said order and decree by virtue of the fact that on the 9th day of January, 1929, the said Margaret B. Barringer was the absolute and unconditional owner in law and in equity of said property, free and clear of encumbrances and on said date conveyed and transferred said property to the

petitioner, Phoenix Title and Trust Company, and that as a part of the same transaction as the conveyance and transfer of said property, the said Phoenix Title and Trust Company issued the Declaration of Trust, dated the 9th day of January, 1929, received in evidence in this proceeding and being respondent Barringer's Exhibit No. 2, in the record of said proceeding, and in said Declaration of Trust acknowledged and declared that said property was conveyed to it for certain purposes in said Declaration of Trust fully stated, and further declared in said Declaration of Trust that a certain note in the principal sum of Eighty-five Thousand (\$85,000.00) Dollars, executed by Thomas J. Tunney, to the said Margaret B. Barringer, to evidence a portion of the purchase price of said property, was a first lien upon said property and was secured by the entire beneficial interest under the Trust in the manner in said Declaration of Trust fully [600] set forth, and that said Declaration of Trust was accepted and approved by the said Thomas J. Tunney and by the said Margaret B. Barringer by written endorsement on said Declaration of Trust, and that thereafter, to-wit, on January 11th, 1929, the said Thomas J. Tunney assigned to Len D. Owens, Jr., H. D. Dinmore and S. W. Mills, being the purchasers of said property, as whose agent said Thomas J. Tunney acted in making said note, and the said assignees ratified, approved and confirmed said Declaration of Trust by written en-

dorsement on said assignment, and that the interest of said Tunney as beneficiary under said Declaration of Trust was later by said purchasers assigned to the bankrupt, said bankrupt being a corporation organized by said petitioners for the express purpose of receiving their interest in said property, and that it appears from the undisputed evidence in the case that the said Thomas J. Tunney and the said Len D. Owens, Jr., H. C. Dinmore and S. W. Mills, the purchasers, and the said bankrupt, at all times acknowledged that they had no interest in said property except the beneficial interest held by them under the terms of said Declaration of Trust and that all of said parties at all times recognized said Declaration of Trust as valid and binding upon them, including the provision therein which declared that the aforesaid note of the said Margaret B. Barringer was a prior lien on all of the property mentioned in said Declaration of Trust, including all of the property mentioned in the above described order and decree, and that at no times has the title of said property stood of record in the name of the bankrupt or his predecessors in interest, but that up until about the 9th day of January, 1929, the title stood of record in Margaret B. Barringer, and about said date the title was transferred of record to said Phoenix Title and Trust Company, and ever since said date said record title has [601] remained vested in the Phoenix Title and Trust Company, and that all persons

dealing with the bankrupt, or any person through whom the bankrupt claimed have at all times been charged with knowledge of the fact that the Phoenix Title and Trust Company appeared as the legal owner of record of said property, and were thereby charged with notice of the fact that said Phoenix Title and Trust Company, and persons claiming under or through it did have an interest in said property, and that it appears from the undisputed evidence in the case that the interest of the bankrupt in said property which has passed to the Trustee in Bankruptcy was assigned to said bankrupt on the 25th day of October, 1930, immediately prior to the filing of the petition in bankruptcy, which was likewise filed on the 25th day of October, 1930, and that in said assignment, (which is in evidence as respondent's Exhibit No. 12) by which the bankrupt acquired whatever interest it had in said property at the time of filing the petition for adjudication, there was purported to be assigned to said bankrupt only the "rights, powers, privileges and benefits created or reserved by that certain Declaration of Trust issued by Phoenix Title and Trust Company under its Trust No. 418, dated January 9th, 1929, in so far as the same affects the following described property in the county of Maricopa, State of Arizona, to-wit: All of Windsor Square", etc., and that it is further stated in said assignment that,

"It is understood and agreed that the title to the above described property is vested in the

Phoenix Title and Trust Company, Trustee, and that the right, title and interest of the assignors hereby assigned, is a part of the interest of beneficiaries under Trust No. 418 of the Phoenix Title and Trust Company, under which trust said lots are held”,

and that it is further stated in said assignment, that,

“The rights and powers of the Phoenix Title and Trust Company, or Phoenix Title and Trust Company, Trustee, shall not be affected”,

[602]

by said assignment and that the bankrupt by written endorsement on said assignment ratified, approved and confirmed all of the terms and conditions of said assignment, and that it appears from the undisputed evidence in the case that all the interest the bankrupt had in the property described in the order which is sought to be reviewed is the interest acquired by and through said assignment on the day the petition for adjudication was filed, and that if the alleged Declaration of Trust did not run with the land, and if the said Thomas J. Tunney never had an interest in said land as is found by the said R. W. Smith, Referee herein, then the said bankrupt acquired no interest whatever in said property, and the said George E. Lilley, as Trustee herein, has no interest in said property, and said property should be turned over to the petitioner herein as the holder of the legal title thereof.

VI.

That the above mentioned order and decree is erroneous in the respect that in Paragraph numbered XVI thereof, the said referee makes the following finding of fact to-wit:

“That numerous creditors hold unsecured claims against said bankrupt estate, (which claims have been filed and allowed therein), who had no actual notice of any asserted claim of lien against the property by Margaret B. Barringer or the Phoenix Title and Trust Company”.

That said finding is erroneous because not justified by the evidence, and does not warrant the conclusion reached by said R. W. Smith, Referee, in said order and decree, for the reason that said finding does not show that said creditors' claims were incurred while the bankrupt was the owner of the property, or in possession of the property, and the record facts establish beyond question that the bankrupt acquired its interest in the property on the day that the petition for adjudication was filed, [603] and did not have any possession whatsoever of said property prior to said date, so that said claims cannot have been incurred in reliance upon any apparent ownership of said property by the bankrupt.

VII.

That the above mentioned order and decree is erroneous in the respect that in Paragraph num-

bered XII thereof, the said referee makes the following finding of fact, to-wit:

“That the respondents, Margaret B. Barringer and Phoenix Title and Trust Company permitted the bankrupt and its predecessors in interest to exercise dominion over, retain possession of and hold themselves out to the public in general and numerous creditors in particular as the owners of the property known as Windsor Square, and which embraced all of the property described in the petition of the trustee in bankruptcy herein, and that in reliance thereon credit was extended to the bankrupt and its predecessors in interest by creditors whose claims have not been paid, and which claims have been filed and allowed in the bankruptcy proceedings.”

That said finding of fact is wholly erroneous because there is no evidence whatsoever to support said finding. That part of said finding which declares that Margaret B. Barringer and Phoenix Title and Trust Company permitted the bankrupt and its predecessors in interest, to hold themselves out to the public in general and numerous creditors in particular, as the owners of the property known as Windsor Square, is contrary to the evidence. That portion of said finding to the effect that credit was extended to the bankrupt in reliance on the alleged holding out of said bankrupt as the owner thereof is contrary to the record facts disclosed by

the proceedings, because the bankrupt acquired the interest in the property which passed to the trustee herein on the same day that the petition for adjudication of bankruptcy was filed, and the claims which have been filed and allowed in the proceeding are claims which were assumed by the bankrupt in an assignment (respondent's Exhibit No. 12) made on the day the [604] petition for adjudication in bankruptcy was filed, and said assignment expressly declared:

“It is understood and agreed that the title to the above described property is vested in the Phoenix Title and Trust Company, Trustee, and that the right, title and interest of the assignors hereby assigned is a part of the interest of beneficiaries under Trust No. 418 of the Phoenix Title and Trust Company under which said lots are held”.

and said assignment further expressly declared,

“That the rights and powers of the Phoenix Title and Trust Company, Trustee, shall not be affected,”

by said assignment, and by written acceptance of said assignment by said Windsor Square Development, Inc., it was declared,

“And the Assignee named in the foregoing assignment hereby accepts the foregoing assignment and likewise approves and confirms all of the terms and conditions thereof”.

so that said bankrupt expressly took whatever interest it acquired in said property subject to the rights of the Phoenix Title and Trust Company under said Declaration of Trust, and the rights of Margaret B. Barringer as set forth in said Declaration of Trust. And the aforesaid finding in the respect that it declares that the predecessors in interest of the bankrupt were permitted to hold themselves out as the owners of said property to creditors is wholly immaterial and irrelevant for the reason that the said referee has no jurisdiction to determine rights between the predecessors of the bankrupt and the said Phoenix Title and Trust Company, or the said Margaret B. Barringer, and that insofar as claims of said creditors against the bankrupt estate are concerned, the said Trustee in bankruptcy clearly acquired only the interest in the property which the bankrupt had and under the assignment from its predecessors the bankrupt took its title expressly subject to the trust and the rights of Phoenix Title and Trust Company and Margaret B. Barringer, and said creditors can [605] assert against the bankrupt and the Trustee in bankruptcy only what the bankrupt assumed, and the bankrupt did not assume any equitable rights that the said creditors may have had against its predecessors, but expressly accepted said property,

“* * * subject to the terms and conditions of the aforementioned Declaration of Trust and all modifications thereof; subject to all of the

liabilities and obligations of the parties of the first part herein in connection with the said trust of the said property; and subject further to all orders or instructions heretofore given to Phoenix Title and Trust Company, as Trustee, in connection with the handling of said trust or trust property”,

as is in said Declaration of Trust expressly declared.

VIII.

That the above mentioned order and decree is erroneous in the respect that in Paragraph numbered XIII thereof the said referee finds,

“That the only liens existing against the property described in the petition of the Trustee in Bankruptcy herein, and their respective order and amounts, and the conditions of each of same, and the only interests of the various other respondents in said property, and the only claims against the proceeds thereof are specifically set forth as follows”,

and fails to include in the list of claims and interests that follows, the right, title and interest of the Phoenix Title and Trust Company, as trustee under the Declaration of Trust received in evidence in said proceeding as respondent Barringer’s Exhibit No. 2, and the lien of Margaret B. Barringer on the note executed by said Thomas J. Tunney, and declared to be a first lien on said property in

said Declaration of Trust received in evidence in said proceeding as respondent Barringer's Exhibit No. 2.

IX.

That the aforesaid order and decree is erroneous in the respect that in Paragraph XIV thereof, the said referee finds, [606]

“That no instrument creating or purporting to create a lien upon the property involved in this proceeding in favor of any respondent herein, or of anyone else, save and except those liens hereinabove specifically set forth, has ever been recorded in the public records of Maricopa County, Arizona”.

That said finding is wholly immaterial and irrelevant for the reason that it appears from the undisputed evidence in the case that the only interest which the bankrupt had in the property at the time when the petition for adjudication in bankruptcy was filed was under the assignment from Len D. Owens, Jr., and Mary Margaret Owens, his wife, which said assignment was executed and delivered on the 25th day of October, 1930, the day the petition in bankruptcy was filed in this cause, and that in said assignment which appears in the proceedings in this cause as respondent's Exhibit No. 12, the rights and interests of Phoenix Title and Trust Company, and the rights and prior lien of Margaret B. Barringer, are clearly disclosed, and the property conveyed to the bankrupt by said

assignment is expressly accepted subject to such rights and lien, and that the Trustee in Bankruptcy cannot obtain a better title than the bankrupt acquired by the instrument upon which the claims of the creditors against the bankrupt are based. That said creditors cannot accept that portion of said assignment by which the bankrupt assumes their claims, and reject that portion of said assignment by which the bankrupt accepts the property subject to the interest of Phoenix Title and Trust Company and the lien of Margaret B. Barringer.

X.

That numerous other recitals and purported findings contained in the aforesaid order and decree are erroneous, for the reason that they are based upon the theory that the above mentioned declaration of trust issued by the Phoenix Title and Trust Company on the 9th day of January, 1929, and received in evidence [607] as respondent Barringer's Exhibit No. 2, in this proceeding is of no force and effect, and upon the theory that the said bankrupt was at the time of the filing of the petition in bankruptcy the legal owner and holder of the property described in said order and decree, and ordered to be sold as the property of said bankrupt, when as a matter of fact it appears from the undisputed evidence in the case that Margaret B. Barringer was the legal and equitable owner in fee simple, on or about January 9th, 1929, and on or about said date conveyed the same to the peti-

tioner, Phoenix Title and Trust Company, and that petitioner, Phoenix Title and Trust Company received such legal and equitable title in fee simple upon a trust which is set forth in the declaration of trust issued by said Phoenix Title and Trust Company on the 9th day of January, 1929, and received in evidence in these proceedings as respondent Barringer's Exhibit No. 2, and that by repudiating and finding invalid said Declaration of Trust, said order and decree in effect establishes that the bankrupt had no title or interest whatever in said property, and that the trustee in bankruptcy, George E. Lilley, has no interest whatever in said property, and upon such finding said referee has no jurisdiction to make an order to sell real estate, the title to which is vested in the petitioner herein.

WHEREFORE, said petitioner, Phoenix Title and Trust Company, feeling aggrieved because of the aforesaid order and decree, prays that the same may be reviewed, as provided in the Bankruptcy Act and General Order XXVII, and that the referee herein will certify to the Judge the questions presented a summary of the evidence relating thereto, and the findings and order of the referee thereon, as provided by said General Order XXVII.

Dated the 29th day of September, 1932.

PHOENIX TITLE AND
TRUST COMPANY,

By J. L. GUST

Its Attorney

Petitioner. [608]

State of Arizona,
County of Maricopa—ss.

J. L. GUST, being first duly sworn on oath deposes and says:

That he is one of the attorneys for the Phoenix Title and Trust Company, the petitioner named in the above and foregoing petition for review;

That he has read the said petition, and that the allegations therein contained are true of his own knowledge, except such allegations as are made upon information and belief, and those he believes to be true;

Affiant further states that this verification is made by affiant for the reason that petitioner is a corporation, affiant is an attorney thereof, and has been in charge of the proceedings to which the above petition relates, and is more familiar with said matters than any officer of said corporation.

J. L. GUST

Subscribed and sworn to before me this 29th day of September, 1932.

[Seal]

ETHOL FROST

Notary Public. My commission expires Feb. 28, 1936.

(Here follows copy of Order and Decree Fixing and Marshalling Liens, Determining Priority Thereof and Adjudging Certain Asserted Liens, and Interests Null and Void, which appears ante page 231).

We hereby acknowledge notice of the filing with the Referee of the within and foregoing petition of Phoenix Title and Trust Company to review Order and Decree Fixing and Marshalling Liens, Determining Priority Thereof, and Adjudging Certain Asserted Liens and Interest Null and Void, Made and Entered by R. W. Smith, Referee on September 17, 1932, and hereby admit and acknowledge that we have this day received a copy of said petition of Phoenix Title and Trust Company to review said order.

Dated September 29, 1932. [609]

THOMAS W. NEALON

ALICE M. BIRDSALL

Attorneys for George E. Lilley,
Trustee in Bankruptcy.

WM. H. MACKAY

Attorney for Respondent, Mar-
garet B. Barringer.

Filed Sept. 29, 1932. R. W. Smith, Referee.

[Title of Court and Cause.]

CERTIFICATE OF REVIEW ON PETITION
OF PHOENIX TITLE & TRUST COMPANY.

To the Honorable F. C. Jacobs, Judge of the Dis-
trict Court of the United States for the District
of Arizona:

I, R. W. SMITH, one of the referees of said
Court in Bankruptcy, do hereby certify that in the

course of the proceedings in said cause before me, the following question arose pertinent to said proceeding:

Was the order of the Referee fixing and marshalling liens, determining priority thereof and adjudging certain asserted liens and interests null and void, erroneous as contrary to law and not justified by the evidence in decreeing the asserted claim and interest of said Phoenix Title & Trust Company in said property to be null and void, and in directing sale of the property described in said order free and clear of all encumbrances except as therein specifically set forth, at private sale and in compliance with the order of sale made by the Court on the 18th day of June, 1931?

The errors complained of by the petitioner, Phoenix Title & Trust Company, are set forth in full in its petition to review.

And the said question is certified to the Judge for his opinion thereon. [610]

Accompanying this certificate is a summary of the evidence on which said order was made.

(This Summary of Evidence is also made part of record with Certificate of Review on Petition of Margaret B. Barringer in same matter)

I return herewith as the record the following items:

1. The record book or minutes of this proceeding.
2. The petition on which this certificate is granted.
3. All Exhibits introduced in Evidence.
4. All pleadings and other papers filed with me herein which are pertinent to this review.

This record is also made part of Record with Certificate of Review on Petition of Margaret B. Barringer in same matter.

Dated at Phoenix, Arizona, this 18th day of November, 1932.

R. W. SMITH

Referee in Bankruptcy.

All of the foregoing papers were transmitted by the Referee to the District Judge on November 18, 1932. [611]

[Endorsed]: Part 1. Lodged May 6, 1936, 4:49 p. m. Equity Rule 75. J. Lee Baker, Clerk, U. S. District Court, District of Arizona. [612]

Pursuant to rules numbered 61 and 12 of said District, the Petition of Margaret B. Barringer to Review Order and Decree Fixing and Marshalling Liens, Determining Priority Thereof and Adjudging Certain Asserted Liens, and Interests Null and Void, Made and Entered by R. W. Smith, Referee,

on September 17, 1932, and the Petition of Phoenix Title and Trust Company to Review Order and Decree Fixing and Marshalling Liens, Determining Priority Thereof and Adjudging Certain Asserted Liens, and Interests Null and Void, Made and Entered by R. W. Smith, Referee, on September 17, 1932, came on regularly for hearing on November 28, 1932. Upon motion of Respondent Barringer it was with consent of the Trustee in Bankruptcy,—

ORDERED that Referee's Certificate of Review on Petition of Margaret B. Barringer, and Referee's Certificate of Review on Petition of Phoenix Title and Trust Company, be stricken from the Law and Motion Calendar, to be reinstated upon motion of the parties.

Thereafter, on December 6, 1932, Respondent Barringer filed in the District Court the following motion:

“[Title of Court and Cause.]

MOTION OF MARGARET B. BARRINGER TO STRIKE REFEREE'S SUMMARY OF EVIDENCE AND FOR ORDER REQUIRING REFEREE TO CERTIFY TRANSCRIPT OF REPORTER'S NOTES AS PART OF RECORD ON REVIEW. [613]

Comes now MARGARET B. BARRINGER, one of the respondents above named, and moves that

the Court enter its order striking from the records and files on review the summary of evidence heretofore certified by R. W. Smith, Esq., Referee in Bankruptcy, in the above-entitled matter, and requiring said Referee to certify to the Court, as a part of the record of said proceedings on review, the transcript of reporters' notes filed with said Referee on the 12th day of April, 1932, and as grounds for said motion respectfully shows to the Court as follows:

(1) That at the commencement of said hearing, George E. Lilley, as Trustee in Bankruptcy of Windsor Square Development, Inc., a corporation, requested a phonographic report of the testimony and proceedings and the request having been granted by the Referee, L. O. Tucker thereupon was called and sworn to take down in shorthand and transcribe into typewriting the testimony adduced and proceedings had at said hearing before said Referee;

(2) That on April 12th, 1932, a typewritten transcript of said reporter's notes, duly certified by said reporter, was filed with said Referee in his office at Phoenix, Arizona;

(3) That, as appears from said reporter's transcript, it was stipulated by and between counsel for said Trustee in Bankruptcy and said respondent, Margaret B. Barringer, respectively, that the transcript of reporter's notes should be certified as a part of the record on any review taken from the Referee's order to be made in said proceeding;

(4) That, as appears from said reporter's transcript, it was stipulated by counsel for said Trustee in Bankruptcy and said respondent, Margaret B. Barringer, respectively, that all objections to testimony and the Referee's rulings thereon should be preserved so that on appeal the whole record will be before the Court; [614]

(5) That on October 19th, 1932, prior to the certification and filing by said Referee of said record on review, respondent, Margaret B. Barringer, filed with said Referee, at his office in Phoenix, Arizona, a written request that said transcript of the reporter's notes be included as a part of the record to be certified on review, as fully appears from a copy of said request and the affidavit of William H. MacKay hereunto annexed, each respectively;

(6) That the record certified to the court and filed herein by said Referee fails to include as a part thereof, the said transcript of reporter's notes;

(7) That the summary of the evidence certified by the Referee as a part of said record on review, does not preserve any of the numerous objections to the introduction of testimony, nor does said summary preserve the said Referee's rulings thereon nor this respondent's exceptions to said rulings, all in violation of the stipulations hereinabove mentioned and in violation of this respondent's right to show that the facts set forth in said summary of the evidence are inferred from testimony, the

erroneous admission of which was duly objected and excepted to by this respondent;

(8) That among the proceedings had before said Referee were various motions to strike matter from the pleadings of this respondent, as well as motions for leave to amend such pleadings, upon all of which motions said Referee made rulings material to this respondent's case; that none of said motions, nor the Referee's rulings thereon, are preserved in said summary of the evidence, all in violation of this respondent's rights under said stipulations and in violation of equity and justice;

(9) That at the outset of said hearing, said respondent, Margaret B. Barringer, objected to the jurisdiction of said Referee to pass upon the validity of the lien claimed by her and [615] mentioned in the Trustee in Bankruptcy's petition to marshal and adjudicate liens, which objections were overruled by said Referee, this respondent duly saving exceptions to said rulings, and that in support of said objections, this respondent further offered to prove that said Trustee in Bankruptcy was not and never had been in possession of the premises described in said petition to marshal liens, and that said Referee refused and declined to hear any such proof and that this respondent duly saved her exception to said ruling; that said summary of the evidence no where discloses any such objections, offers of proof, rulings thereon or exceptions saved, each respectively;

(10) That the right to cross-examine witnesses whose testimony purports to be set forth in said summary of the evidence as a part of the record on this respondent's petition for review was to this respondent denied, as appears from said transcript of the reporter's notes, yet no where appears from said summary of the evidence filed and certified by the Referee herein;

(11) That none of the stipulations, objections, offers of proof, rulings and exceptions hereinabove in the grounds of this motion mentioned, are preserved in any other paper or document certified to this Court by said Referee on review;

(12) That, as fully appears from the affidavit of William H. MacKay hereunto annexed, and from said Certificate on Review, said transcript of reporter's notes was filed with said Referee at his office in Phoenix, Arizona, before he announced, made or entered any order or decision in said proceeding;

(13) That said summary of the evidence is inaccurate and incomplete in that it fails to set forth matters of uncontradicted testimony material to this respondent's case on review and, in many instances, that it sets forth as matters summary statements that have no support in the evidence adduced and, on the contrary, are directly repugnant to the uncontradicted evidence. [616]

(14) That the objections, motions and applications, hereinabove mentioned, the Referee's rulings

thereon and this Respondent's exceptions thereto, each respectively, and the testimony which shows said summary to be incomplete and inaccurate are all preserved in said transcript of the reporter's notes on file with said Referee, as aforesaid.

This motion is based upon the papers hereunto annexed, the Certificate on Review filed herein by said Referee and the following records in the office of said Referee at Phoenix, Arizona:

- (a) Transcript of Reporter's notes;
- (b) Request of Respondent, Margaret B. Barringer, filed with said Referee on October 19th, 1932.

WHEREFORE, Respondent, MARGARET B. BARRINGER, prays:

1. That said summary of the evidence be stricken from the said record on review;
2. That said Referee be required to certify, as a portion of said record on review, the transcript of the reporter's notes filed in his office on the 22nd day of March, 1932;
3. For such other and further relief as is just and equitable.

ELLINWOOD & ROSS

WM. H. MACKAY

Attorneys for Respondent,
Margaret B. Barringer.

[Title of Court and Cause.]

AFFIDAVIT OF WILLIAM H. MacKAY.

State of Arizona,
County of Maricopa—ss.

WILLIAM H. MacKAY, being first duly sworn,
deposes and says: [617]

That on April 12th, 1932, he filed the transcript of the reporter's notes of the evidence adduced and proceedings had before R. W. Smith, Esq., Referee in Bankruptcy, at the hearing on the petition of George E. Lilley, Trustee in Bankruptcy, to marshal liens, which said transcript had been first duly certified by the person sworn to take and transcribe said testimony and proceedings, and that he is informed and believes said transcript of the reporter's notes is now in the files and records of said Referee in his office at Phoenix, Arizona;

That prior to filing said transcript of the reporter's notes on April 12th, 1932, as aforesaid, neither respondent, Margaret B. Barringer, nor her attorneys, received from said Referee, or any one on his behalf, any announcement of his decision in the above-entitled matter; that on March 22nd, 1932, affiant interviewed said Referee for the purpose of ascertaining whether said Referee desired oral argument upon the briefs theretofore with him filed and was advised by said Referee that he did not desire oral argument and would not make his decision until a draft of form of findings was prepared and submitted to him by counsel for the Trustee in

Bankruptcy and an opportunity given affiant to confer with said Referee and said counsel concerning the form of said proposed findings;

That on October 19th, 1932, affiant filed with said Referee, at his office, in Phoenix, Arizona, a written request that said transcript of reporter's notes be included in the record to be certified by said Referee on review, a copy of which request is hereunto annexed and marked "Exhibit A".

WILLIAM H. MACKAY

Subscribed and sworn to before me this 6th day of December, 1932.

[Seal]

RUTH HARRIS

Notary Public.

My commission expires: Sept. 17, 1934 [618]

Receipt of a copy of the within Motion acknowledged this 6th day of December, 1932.

THOMAS W. NEALON

ALICE M. BIRDSALL

Attorneys for Trustee in
Bankruptcy.

KIBBEY, BENNETT, GUST,
SMITH & ROSENFELD

Attorneys for Respondent,
Phoenix Title & Trust Com-
pany.

R. W. SMITH

Referee in Bankruptcy.

By W. M. SMITH

Clerk.

(Filed Dec. 6, 1932.)"

Thereupon, on December 8, 1932, Respondent Barringer filed in the District Court the following exceptions:

“[Title of Court and Cause.]

**EXCEPTIONS OF RESPONDENT MARGARET
B. BARRINGER TO REFEREE'S SUM-
MARY OF EVIDENCE.**

Comes now the Respondent, MARGARET B. BARRINGER, and files the following exceptions to the summary of evidence certified by R. W. Smith, Referee in Bankruptcy, as a part of the record on said Respondent's petition to review said Referee's order dated September 17th, 1932:

I.

Respondent Barringer excepts to said summary for the reason that it fails to set forth the stipulation made at said hearing by the Trustee in Bankruptcy and Respondent Barringer to the effect that the transcript of the reporter's notes shall be certified as a part of the record on review;

II.

Respondent Barringer excepts to said summary for the reason that it fails to set forth the stipulation made at said [619] hearing by the Trustee in Bankruptcy and Respondent Barringer to the effect that all motions and objections of counsel, together with the referee's rulings thereon and the exceptions noted to such rulings, shall be preserved in the record for the purpose of review:

III.

Respondent Barringer excepts to said summary for the reason that it no where appears therein that said Referee granted the motion of the Trustee in Bankruptcy, which was made at said hearing without notice, to strike from Respondent Barringer's answer and petition in intervention allegations placing in issue the Trustee's claim to possession of said property, to which ruling Respondent Barringer duly excepted;

IV.

Respondent Barringer excepts to said summary for the reason that it does not disclose the fact that at said hearing Respondent Barringer moved to amend her answer and petition in intervention by affirmatively alleging that said Trustee in Bankruptcy was not and had never been in possession of said property, which motion said Referee denied and which ruling Respondent Barringer duly excepted to;

V.

Respondent Barringer excepts to said summary for the reason that it does not disclose that at said hearing Respondent Barringer objected to the jurisdiction of said Referee to pass upon the validity of Respondent Barringer's lien upon the lots described in Trustee's petition to marshal liens and, in support of said objection, offered to prove that said Trustee in Bankruptcy was not and has never been in possession of the premises described in

said petition to marshal liens, which objection said Referee [620] overruled, and which offer of proof said Referee declined and refused to receive, exceptions being duly taken by Respondent Barringer to each of said rulings;

VI.

Respondent Barringer excepts to said summary for the reason that it states E. J. Bennett, called as a witness for Respondent Barringer, testified that he would be surprised if the said property at the present time could be sold for Fifty Thousand (\$50,000.00) Dollars cash and that such opinion was not based upon the real value of said property, whereas, in fact, said witness testified to facts rendering his opinion on the market value of said property competent and testified that by "real value" he meant the gross amount for which the property, by means of an intensive sales campaign involving considerable expense and several years, could be sold and that the present cash sales value of said property is not in excess of Fifty Thousand (\$50,000.00) Dollars.

VII.

Respondent Barringer excepts to said summary for the reason that it is therein stated that George E. Lilley, called as a witness for Respondent Barringer, testified the present cash sales value of said property is One Hundred Twenty Thousand (\$120,000.00) Dollars, whereas said witness, in fact, testified that the present cash sales value of said prop-

erty, even at a sale of separate lots extending over a period of several months, is not in excess of Fifty or Sixty Thousand Dollars.

VIII.

Respondent Barringer excepts to said summary for the reason that it omits to state that Harry Kay, called as a witness for Respondent Barringer, testified that he sold real estate owned [621] by him in the immediate vicinity of said property in 1912 and after receiving Twenty-five Thousand (\$25,000.00) Dollars on the purchase price, is now requested by the purchaser to take back the land in consideration of the release of a purchase money mortgage and that the market values of real estate in said vicinity at present are not more than one-third of their former values.

IX.

Respondent Barringer excepts to said summary for the reason that it omits to state that Gene Cunningham, called as a witness for this Respondent, testified that the assignment (Respondent Barringer's Exhibit No. 10) was made by Owens, Dinmore and Mills in contemplation of a transaction which was never consummated and, like the re-assignment to Owens (Respondent Barringer's Exhibit No. 11), was naked and without any consideration and that Windsor Square Development, Inc., never assumed any indebtedness whatever or accepted any beneficial interest under the said agreement.

X.

Respondent Barringer excepts to said summary for the reason that it sets forth the testimony of Respondent W. R. Wells, called as a witness in his own behalf, whom this Respondent was, by the Referee, denied the right to cross-examine and whose testimony the Trustee in Bankruptcy avowed was no part of the evidence upon any issues between the Referee in Bankruptcy and this Respondent.

XI.

Respondent Barringer excepts to said summary for the reason that it sets forth the testimony of Respondent E. L. Grose, called as a witness in his own behalf, to the effect that Owens [622] represented himself as owner of certain lots in Windsor Square, whereas said witness gave no competent testimony to such effect and by his pleadings and testimony showed he entered into a written contract to purchase said lots from Phoenix Title & Trust Company.

XII.

Respondent Barringer excepts to said summary for the reason that it fails to state that said E. L. Grose testified to the effect that he could not recollect the contents of any advertisement and that the property was advertised as owned by "Windsor Square" and that he presumed Windsor Square was a corporation.

XIII.

Respondent Barringer excepts to said summary for the reason it states said E. L. Grose testified he purchased lots from Owens and Dinmore believing them to be the owners, whereas said witness testified he purchased said lots from Phoenix Title & Trust Company.

XIV.

Respondent Barringer excepts to said summary for the reason it states Forrest Whitney, on behalf of Republic and Gazette, extended credit to Owens and Dinmore as owners of Windsor Square, whereas said witness gave no competent testimony to such effect, merely, over Respondent Barringer's objections, being permitted by said Referee to state such a conclusion.

XV.

Respondent Barringer excepts to said summary for the reason it states Henry F. Leiber, called as a witness by the Trustee in Bankruptcy, testified that in doing work for Owens and Dinmore he dealt with them as owners of Windsor Square, whereas said witness gave no competent testimony to such effect, merely, over Respondent Barringer's objections, stating the bare conclusion that he dealt with them as such owners. [623]

XVI.

Respondent Barringer excepts to said summary for the reason it states said witness testified Owens told him Owens and Dinmore were owners of Wind-

sor Square, whereas the testimony of said witness shows that neither the Phoenix Title & Trust Company nor Respondent Barringer ever knew of or assented to any such representation.

XVII.

Respondent Barringer excepts to said summary for the reason it states said witness testified that he painted signs describing Owens and Dinmore as owners and that such signs were placed on Windsor Square, for the reason that Respondent Barringer was prevented and restrained by said Referee from cross-examining said witness with respect to such statements.

XVIII.

Respondent Barringer excepts to said summary for the reason it states George E. Lilley, called as a witness in his own behalf, testified that he had been in possession of said property during all the time he has been Trustee in Bankruptcy, whereas said witness gave no competent testimony to such effect, his testimony consisting of a bare conclusion of law and being duly objected to by Respondent Barringer.

XIX.

Respondent Barringer excepts to said summary for the reason it fails to set forth the testimony of said witness to the effect that the only acts performed by him with respect to said property from which possession could be inferred were acts done

for the purpose of preserving and repairing the property as in said declaration of trust was required by the bankrupt to be done. [624]

XX.

Respondent Barringer excepts to said summary for the reason it fails to state said witness testified he based his alleged right to possession of said property upon no deed, contract or instrument whatsoever and solely upon the order of said court.

XXI.

Respondent Barringer excepts to said summary for the reason it sets forth as evidence of the indebtedness of said bankrupt's estate Trustee's "Exhibit J", consisting of ex parte affidavits of various persons none of whom were before the court, and whom Respondent Barringer had no opportunity to cross examine.

XXII.

Respondent Barringer excepts to said summary for the reason it does not preserve Respondent Barringer's offer to prove that the Trustee in Bankruptcy has recognized the validity of the conveyance to Phoenix Title & Trust Company (Respondent Barringer's Exhibit I) and the Declaration of Trust (Respondent Barringer's Exhibit 2), which offer of proof was declined and rejected by the Referee.

XXIII.

Respondent Barringer excepts to said summary for the reason it fails to show the refusal of counsel for Trustee in Bankruptcy to disclose in court the nature of the Trustee in Bankruptcy's claim to any right, title or interest in or to said property.

XXIV.

Respondent Barringer excepts to said summary for the reason it sets forth the appraised value of said property at [625] \$171,336.01, as disclosed by the ex parte affidavit of the appraisers (Trustee Exhibit H) of said estate, whom Respondent Barringer had no opportunity to cross-examine and which was received in evidence over her objection.

XXV.

Respondent Barringer excepts to said summary for the reason it sets up the ex parte schedules of the bankrupt's officer's (Trustee's Exhibits K and L) as showing the unsecured indebtedness of said bankrupt to be large sums of money, without exhibits were in the nature of hearsay received over Respondent Barringer's objection.

XXVI.

Respondent Barringer excepts to said summary for the reason that the testimony adduced by the trustee's witnesses and each and every part thereof is incompetent, irrelevant and immaterial, and was received over Respondent Barringer's objections.

XXVII.

Respondent Barringer excepts to said summary for the reason that a considerable portion of the testimony of the witnesses of the Trustee in Bankruptcy consists of opinions and conclusions of witnesses who, without establishing any basis therefor, were over Respondent Barringer's objection permitted to give their said opinions and conclusions.

XXVIII.

Respondent Barringer excepts to said summary for the reason that the same is an incomplete and inaccurate summary of the testimony adduced.

XXIX.

Respondent Barringer excepts to said summary for the [626] reason it fails to preserve any of the objections made by her to the introduction of testimony, the Referee's rulings thereon, or her exceptions to such rulings.

XXX.

Respondent Barringer excepts to said summary for the reason it fails to disclose that said Referee at said hearing ruled to the effect that the Trustee in Bankruptcy's possession is conclusively established by the schedule by said bankrupt of said property as a part of its estate.

XXXI.

Respondent Barringer excepts to said summary for the reason it is contrary to and unsupported

by the evidence adduced at said hearing before said Referee on the Trustee in Bankruptcy's petition to marshal liens and sell property free and clear of encumbrances.

Respondent Barringer, in support of each and all of the foregoing exceptions, refers the court to the Transcript of the Reporter's notes filed with said Referee on April 12th, 1932, and alleges that upon an inspection of said transcript the validity of each and all of said exceptions will fully appear.

ELLINWOOD & ROSS,

WM. H. MACKAY,

Attorneys for Respondent,

Margaret B. Barringer.

Receipt of a copy of within Exceptions acknowledged this 8th day of December, 1932.

THOMAS W. NEALON,

ALICE M. BIRDSALL,

Attorneys for Trustee in

Bankruptcy.

(Filed December 8, 1932.)" [627]

Thereupon, Respondent Phoenix Title and Trust Company filed in the District Court the following motion:

“[Title of Court and Cause.]

MOTION OF PHOENIX TITLE AND TRUST
COMPANY FOR ORDER REQUIRING
REFEREE TO CERTIFY TRANSCRIPT
OF REPORTER'S NOTES AS PART OF
RECORD ON REVIEW.

Comes now Phoenix Title and Trust Company, one of the respondents above named, and moves that the court enter an order requiring R. W. Smith, Esq., Referee in Bankruptcy, in the above entitled matter to certify to the court as a part of the record of said proceedings on review the transcript of reporter's notes of the evidence taken at the hearing of the matters brought before this court for review. The transcript of reporter's notes was filed with said referee on the 12th day of April, 1932, and as grounds for said motion respectfully shows to the court as follows:

1. That at the beginning of said hearing which is brought before this court for review, George E. Lilley, as Trustee in Bankruptcy, through his attorney, Thomas W. Nealon, requested a phonographic report of the testimony and proceedings, and the request was granted by the referee. Thereupon, L. O. Tucker, was called and duly sworn as official shorthand reporter to take down in short-

hand and transcribe into typewriting the testimony adduced and proceedings had at the examination.

2. That before any testimony was taken at said hearing, the said R. W. Smith, Esq., Referee, announced that he would follow the procedure that all the rulings would be preserved to the answers of the respondents, and that when it came to the testimony, said testimony would be taken down subject to the objections, so that on appeal the whole record would be before the court, following the usual practice in that matter, and that the counsel for [628] the several respondents, including counsel for Phoenix Title and Trust Company, were present at said hearing, acquiesced in said decision of the referee, and thereafter, throughout said hearing, relied on said decision and announcement, and conducted the cases of their clients throughout said hearing in accordance with and in reliance on said announcement and decision.

3. That at said hearing before any testimony was taken the said referee announced that any party might save exception to any portion of the proceedings in order that all rights might be preserved upon a review of any order that might be made, and that counsel for the several respondents, including counsel for the Phoenix Title and Trust Company, were present when said announcement was made and relief thereon, and thereafter presented the claims of their clients in accordance with said announcement so made by the said referee, and in reliance thereon.

4. That at various times in the course of said hearing, evidence was offered which was not received by the said referee, and offers of proof were made and exceptions to rulings were taken, all with the understanding and agreement between the said referee, counsel for the trustee, and counsel for the respondents, including counsel for the Phoenix Title and Trust Company, that all of said rulings would be preserved in said transcript of the reporter's notes and would be sent up with the record to the Judge of the United States District Court for review, in the event any of the parties to said proceeding should make application for review of any order that might be entered by the said referee.

5. That at the close of said hearing, it was stipulated by and between counsel for the trustee, the several counsel for respondents, and the referee, that the matter should be submitted [629] upon briefs, the respondents to have thirty days in which to file opening briefs, but in case the transcript of testimony was not filed within fifteen days, then such time to be extended so that the respondents would have fifteen days from the date of such filing, and counsel for the trustee was to have thirty days thereafter in which to file his answering brief, and respondents to have ten days thereafter in which to file reply briefs, at which time the matter would be deemed submitted to the court.

6. That before the order of the referee, which is under review in this proceeding was made and

entered, the transcript of the reporter's notes was filed with said referee, the same being filed as appears from the referee's record on April 12th, 1932.

7. That the summary of the evidence certified by the referee as a part of the record for review does not set forth any of the numerous objections to the introduction of testimony, nor does said summary set forth the referee's rulings thereon, nor respondents' exceptions to said rulings, all of which is in violation of the announcement, rulings and statements made by the said referee, that said objections, rulings and exceptions would be preserved in the reporter's transcript and submitted to the judge in the event a review of the referee's order should be sought.

8. That among the proceedings had before said Referee and which were incorporated in said reporter's transcript were various motions to strike matter from the pleadings of the respondents, including respondent Phoenix Title and Trust Company, upon all of which motions said referee made rulings material to respondent's case. That none of said motions, nor the rulings thereon, are set forth in the summary of evidence certified by [630] the referee, all of which is in violation of the announcement and decision made by the said referee at the opening of said hearing, and upon which announcement and decision this respondent had a right to rely, and did rely in conducting said hearing.

9. That the right to cross-examine witnesses whose testimony purports to be set forth in the summary of the evidence certified by said referee as a part of the record on this respondent's petition for review was denied, as appears from said transcript of the reporter's notes, and it no where appears from said summary of the evidence filed and certified by the referee herein that said right of cross-examination was so denied.

10. That none of the stipulations, objections, offers of proof, rulings and exceptions hereinabove in the grounds of this motion mentioned are preserved in any other paper or document certified to this court by said referee on review.

11. That said summary of the evidence certified by the referee to this court is inaccurate and incomplete in that it fails to set forth matters of uncontradicted testimony material to this respondent's cause on review, and in many instances it sets forth statements that have no support in the evidence adduced, and on the contrary are directly repugnant to the uncontradicted evidence.

12. That it appears from the record of said referee filed herein that the order of the referee which is brought here for review by the petition of the respondent, Phoenix Title and Trust Company and by other respondents, involves the validity of a lien upon practically the entire bankrupt estate, said lien being in the amount of approximately Seventy Thousand (\$70,000) Dollars, besides interest, costs and attorneys' fees, and that [631] a hearing was had before the referee which occupied many days, and

that by agreement of all the parties a shorthand reporter was employed to take down in shorthand and transcribe into typewriting all of the proceedings at said hearing, and that said proceedings were so transcribed into shorthand by said reporter and resulted in a transcript of 522 typewritten pages. That it appears from the record certified to this court by the referee that the alleged summary of the evidence submitted to the court under the certificate of the referee cannot be an accurate or complete statement of the proceedings which are presented to the court for review, and that the certification of said alleged summary of the evidence to this court as a proper record for the review of said order of the referee is in effect a denial to the respondents herein of the right of review granted by the bankruptcy laws of the United States and the bankruptcy rules, by reason of the fact that it does not place before the court the true facts with reference to the proceedings which are before the court for review.

13. That all of the matters and proceedings with reference to the order before this court for review are set forth in the transcript of the reporter's notes which is on file in the office of the referee as aforesaid. That said transcript of the reporter's notes was made at the request of the trustee in bankruptcy, and was approved by the referee and filed with the consent of all of the parties, and together with the exceptions received in evidence and the other papers certified to this court by the said referee, provides a true and complete record upon

which this court may properly review the aforesaid order of the referee.

WHEREFORE, respondent Phoenix Title and Trust Company [632] prays that said R. W. Smith, Esq., referee in bankruptcy, be required to certify as a portion of the record on review in this matter the transcript of the reporter's notes filed in his office on the 12th day of April, 1932, and that such other and further orders may be made and entered with respect to said matter as is proper in the premises.

KIBBEY, BENNETT, GUST,
SMITH & ROSENFELD,
Attorneys for Respondent,
Phoenix Title and Trust
Company.

State of Arizona,
County of Maricopa.—ss.

J. L. Gust, being first duly sworn on oath deposes and says:

That he is one of the attorneys for the respondent, Phoenix Title and Trust Company, and makes this affidavit for and on behalf of said company for the reason that he is familiar with the facts to which the same relate; that affiant has read the above and foregoing motion and that the allegations therein contained are true.

J. L. GUST.

Subscribed and sworn to before me this 8th day of December, 1932.

[Seal]

PEARL C. HOVDE,
Notary Public.

My commission expires June 10, 1936.

Received copy of within this 8th day of December, 1932.

THOMAS W. NEALON,
ALICE M. BIRDSALL,
Attorneys for Trustee.

(Filed Dec. 8, 1932.)”

Thereupon, Respondent Phoenix Title and Trust Company filed in the District Court the following exceptions: [633]

“[Title of Court and Cause.]

EXCEPTIONS OF RESPONDENT, PHOENIX
TITLE AND TRUST COMPANY TO SUMMARY OF EVIDENCE CERTIFIED BY
R. W. SMITH, ESQ., REFEREE IN BANKRUPTCY.

Comes now the respondent, Phoenix Title and Trust Company, and files the following exceptions to the summary of evidence certified by R. W. Smith, Esq., referee in bankruptcy, as a part of the record on said respondent's petition to review said referee's order, dated September 17th, 1932;

1. Said respondent excepts to said summary for the reason that it fails to set forth the stipulations

made between counsel for the respective parties at said hearing to the effect that the transcript of the reporter's notes should be certified as a part of the record on review, and the said referee's assent to said stipulation and announcement that said reporter's transcript would be so certified.

2. Said respondent excepts to said summary for the reason that it fails to set forth the stipulations made at said hearing by the respective counsel to the effect that all motions and objections of counsel, together with the referee's ruling thereon, and the exceptions noted to such rulings should be preserved in the record for the purpose of review, and the referee's assent to said stipulation and his announcement that this would be done.

3. Said respondent excepts to said summary of the evidence for the reason that it nowhere appears therein that portions of the answer of said respondent were stricken out by order of the referee upon motion of counsel for the trustee only two days before the hearing, and long after the proper time allowed for making such motion. [634]

4. Said respondent excepts to said summary of the evidence for the reason that it is therein stated that George E. Lilley, called as a witness for respondents, testified that the present cash sales value of said property is \$120,000.00, whereas, said witness in fact testified that the present cash sales value of said property, even at a sale of separate lots, extending over a period of several months, is not in excess of fifty or sixty thousand dollars.

5. Said respondent excepts to said summary of

the evidence for the reason that it omits to show that Gene Cunningham, called as a witness for respondent Barringer, testified that the assignment, (Respondent Barringer's Exhibit No. 10) was made by Owens, Dinmore and Mills, in contemplation of a transaction which was never consummated, and like the re-assignment to Owens, (Respondent Barringer's Exhibit No. 11) was naked and without any consideration, and that Windsor Square Development, Inc., never assumed any indebtedness whatever, or accepted any beneficial interest under said agreement.

6. Said respondent excepts to said summary of the evidence for the reason that it states that George E. Lilley, the trustee in bankruptcy in said matter, called as a witness on his own behalf, testified that he had been in possession of said property during all the time that he has been trustee in bankruptcy, when in truth and in fact said witness gave no competent testimony to such effect, his testimony consisting of a bare conclusion of law and being duly objected to.

7. Said respondent excepts to said summary of the evidence for the reason that it fails to set forth the testimony of said witness, George E. Lilley, to the effect that the only acts performed by him with respect to said property from which possession could be inferred, were acts done for the purpose of [635] preserving and repairing the property as in said declaration of trust was required by the bankrupt to be done.

8. Said respondent excepts to said summary of the evidence for the reason that it fails to state that said witness, George E. Lilley, testified he based his alleged right to possession of said property upon no deed, contract or instrument whatsoever, and solely upon the order of the court.

9. Said respondent excepts to said summary of the evidence for the reason that it sets forth as evidence of the indebtedness of said bankrupt's estate, Trustee's Exhibit J, consisting of ex parte affidavits of various persons, none of whom were before the court and whom there was no opportunity to cross-examine.

10. Said respondent excepts to said summary of the evidence for the reason that it does not preserve respondent Barringer's offer to prove that the trustee in bankruptcy has recognized the validity of the conveyance to Phoenix Title and Trust Company (Respondent Barringer's Exhibit 1) and the Declaration of Trust (Respondent Barringer's Exhibit 2), which offer of proof was declined and rejected by the referee, and which offer of proof would enure to the benefit of respondent Phoenix Title and Trust Company as well as to said respondent Barringer.

11. Said respondent excepts to said summary of the evidence for the reason that it fails to show the refusal of counsel for trustee in bankruptcy to disclose in court the nature of the trustee in bankruptcy's claim to any right, title or interest in or to the said property.

12. Said respondent excepts to said summary of the evidence for the reason that it sets forth the

appraised value of said property at \$171,336.01, as described by the ex parte affidavit of appraisers (Trustee's Exhibit No. H) of said estate, [636] whom respondents had no opportunity to cross-examine, and which was received in evidence over objection.

13. Said respondent excepts to said summary of the evidence for the reason that the testimony adduced by the trustee in bankruptcy's witnesses, and each and every part thereof, is incompetent, irrelevant and immaterial, and was received over respondent's objections.

14. Said respondent excepts to said summary of the evidence for the reason that a considerable portion of the testimony of the witnesses of the trustee in bankruptcy consists of opinions and conclusions of witnesses, without establishing any basis therefor, or over respondent's objections, permitted to give their said opinions and conclusions.

15. Said respondent excepts to said summary of the evidence for the reason that the same is an incomplete and inaccurate summary of the testimony adduced.

16. Said respondent excepts to said summary of the evidence for the reason that it fails to prove any of the objections made by respondents to the introduction of testimony, referee's rulings thereon or exceptions to such rulings.

17. Said respondent excepts to said summary of the evidence for the reason that the hearing before the referee was conducted throughout with the understanding and belief on the part of the

respondent that the reporter's transcript of the proceedings containing all objections, offers of proof, rulings of the referee and exceptions to rulings, would be taken down by said reporter and certified to the court in the event a review of the referee's order might be sought. That said understanding and belief of the respondents was induced by the said referee by reason of his [637] statement that such would be the case, and that to now submit to the court a partial, incomplete and imperfect summary of the evidence only, received at said hearing, without the other matters included in said reporter's transcript, necessarily results in depriving respondents of a fair hearing before the court on this review.

KIBBEY, BENNETT, GUST,
SMITH & ROSENFELD,
Attorneys for respondent,
Phoenix Title and Trust
Company.

Received copy of within this 8th day of December, 1932.

THOMAS W. NEALON,
ALICE M. BIRDSALL,
Attorneys for Trustee.

(Filed Dec. 8, 1932.)”

Thereafter, on December 12, 1932, said Motion of Margaret B. Barringer to Strike Referee's Summary of Evidence and for Order Requiring Referee to Certify Transcript of Reporter's Notes as Part

of Record on Review and said Motion of Phoenix Title and Trust Company for Order Requiring Referee to Certify Transcript of Reporter's Notes as Part of Record on Review, pursuant to Rule 12 of said District Court, came on regularly for hearing and were by order of the Court duly entered from time to time continued for hearing until July 24, 1933, on which date, with the consent of the parties, said motions were set for hearing on August 1, 1933, at Prescott, Arizona, in said District.

Thereafter, said motions were on August 1, 1933, argued before the Court by Respondent Barringer, Respondent Phoenix Title and Trust Company, and George E. Lilley, as Trustee in Bankruptcy, and were by the Court ordered submitted and taken under advisement.

Thereafter, on September 25, 1933, the following order [638] was by the Court entered on its minutes, to-wit:

“April 1933 Term

At Phoenix

MINUTE ENTRY

Of Monday, September 25, 1933.

Honorable F. C. Jacobs, United States District
Judge, Presiding.

B570 In the Matter of

WINDSOR SQUARE DEVELOPMENT, INC.,
a corporation,

Bankrupt.

Motions of Respondents, Margaret B. Barringer
and Phoenix Title and Trust Company for Order

requiring Referee to Certify Transcript of Reporter's Notes as part of Record on Review, having heretofore been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,

IT IS ORDERED that said Motions be, and the same are hereby granted."

Thereafter, on September 28, 1933, R. W. Smith, Esq., one of the Referees in Bankruptcy of said court, transmitted to Honorable F. C. Jacobs, United States District Judge at Phoenix, Arizona, the Reporter's Transcript consisting of two type-written volumes, endorsed: "Filed Apr. 12, 1932, R. W. Smith, Referee" and "Filed September 28, 1933, J. Lee Baker, Clerk United States District Court of the District of Arizona". Annexed to Volume II of said reporter's notes is the following certificate:

"Shorthand Reporters' Certificate.

We hereby certify that we were sworn as official shorthand reporters in this cause; that the proceedings had [639] and evidence given at said hearing are contained fully and accurately in the shorthand notes taken by us of said hearing, and that the foregoing is a correct transcript thereof.

Dated this 11th day of April, A. D., 1932.

(Signed) L. O. TUCKER,

Official Shorthand Reporter.

(Signed) JOSEPH T. MORGAN,

Official Shorthand Reporter."

Said reporters' notes were accompanied by the following certificate:

(Court and Cause.)

CERTIFICATE OF REFEREE MAKING REPORTER'S TRANSCRIPT PART OF RECORD ON REVIEW IN MATTER OF WINDSOR SQUARE DEVELOPMENT, INC., BANKRUPT.

IN ACCORDANCE with order of Hon. Fred C. Jacobs, Judge of the United States District Court, I HEREBY CERTIFY the transcript of reporter's notes taken on a hearing before me on November 25, 1931, subsequent dates to which same was continued, as appears in the accompanying reporter's transcript; this [640] hearing having been upon trustee's petition to marshal liens and order to show cause thereon on Margaret B. Barringer, et al, respondents. The reporter's transcript accompanies this certificate.

Dated at Phoenix, Arizona, this 28th day of September, 1933.

R. W. SMITH,
Referee in Bankruptcy.

(Filed Sep 28 1933.)"

Thereafter, pursuant to consent of the parties, the Referee's Certificate of Review on the Petition of Respondent Barringer and the Referee's Certificate of Review on the Petition of Respondent Phoenix Title and Trust Company were ordered by the

Court to be heard on August 9, 1934, at Prescott, Arizona, in said District.

Thereupon, on August 9, 1934, at Prescott, George E. Lilley, Trustee in Bankruptcy, Respondent Barringer, Respondent Phoenix Title and Trust Company and Respondent E. L. Grose appeared by counsel and argued said certificates of review and the cause was submitted and by the Court ordered taken under advisement.

Thereafter, on December 13, 1934, the Court entered upon its minutes the following order, to-wit:
“October 1934 Term At Phoenix

MINUTE ENTRY

Of Thursday, December 13, 1934.

Honorable F. C. Jacobs, United States District Judge, Presiding.

B570 In the Matter of

WINDSOR SQUARE DEVELOPMENT, INC.,
a corporation,

Bankrupt. [641]

Referee's Certificates of Review on Petitions of Margaret B. Barringer and Phoenix Title and Trust Company for Review of Referee's Order fixing and marshaling liens, determining priority thereof, and adjudging certain asserted liens and interests null and void, having heretofore been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,

IT IS ORDERED that said Referee's Order be approved and affirmed, and that an exception be entered on behalf of Respondents, Margaret B. Barringer and Phoenix Title and Trust Company."

Thereafter, on December 17, 1934, the Court entered upon its minutes the following order, to-wit:

"October 1934 Term

At Phoenix

MINUTE ENTRY

of Monday, December 17, 1934

Honorable F. C. Jacobs, United States District Judge, Presiding.

B-570

In the Matter of

WINDSOR SQUARE DEVELOPMENT, INC.,
a corporation,

Bankrupt.

Thomas W. Nealon, Esquire, appears as counsel for Trustee; Messrs. Ellinwood and Ross, by Wm. H. MacKay, Esquire, appear as counsel for Respondent, Margaret B. Barringer, and Messrs. Kibbey, Bennett, Gust, Smith & Rosenfeld, by John L. Gust, Esquire, appear as counsel for Respondent, Phoenix Title and Trust Company. For the purpose of allowing Respondents, Margaret B. Barringer, and Phoenix Title and Trust Company to file further authorities,

IT IS ORDERED that the Order approving and confirming Referee's Order be vacated." [642]

Thereafter, on January 7, 1935, the Court entered upon its minutes the following order, to-wit:

“October 1934 Term

At Phoenix

MINUTE ENTRY

Of Monday, January 7, 1935.

Honorable F. C. Jacobs, United States District Judge, Presiding.

B570 In the Matter of

WINDSOR SQUARE DEVELOPMENT, INC.,
a corporation,

Bankrupt.

The Petitions of Margaret B. Barringer and Phoenix Title & Trust Company for Review of Referee's Order fixing and marshaling liens, determining priority thereof and adjudging certain asserted liens and interests null and void, having been heretofore resubmitted to the Court upon additional memoranda of authorities of the petitioners, and the Court having duly considered the same, and being fully advised in the premises,

IT IS ORDERED, ADJUDGED AND DECREED that the Order of the Referee be approved and affirmed, and that an exception be entered on behalf of respondents, Margaret B. Barringer and Phoenix Title and Trust Company.”

CONDENSED STATEMENT IN NARRATIVE
FORM OF THE TESTIMONY OF THE
WITNESSES CONTAINED IN THE SAID
TWO VOLUMES OF THE REPORTER'S
TRANSCRIPT AND THE EXHIBITS CER-
TIFIED BY THE REFEREE TO THE DIS-
TRICT COURT.

BE IT REMEMBERED, that the trial of the above-entitled cause came on regularly to be heard by R. W. Smith, Esquire, one of the Referees in Bankruptcy of said Court at Phoenix, Arizona, on November 25, 1931, George E. Lilley, Trustee in Bankruptcy of the Estate of Windsor Square Development, Inc., a corporation, Bankrupt, being present in person and by his attorneys, Thomas W. Nealon and Alice M. Birdsall, both of Phoenix, Arizona; Respondent Margaret B. Barringer being represented by her counsel, Wm. H. MacKay; Respondent Phoenix Title & [643] Trust Company being represented by its counsel John L. Gust; Respondent Salt River Valley Water Users' Association being represented by its counsel John L. Gust; Respondent E. L. Grose being represented by his counsel Gene Cunningham; Respondent W. R. Wells being represented by his counsel Matt Walton; Respondents Maricopa County, Arizona, and Mitt Sims, State Treasurer, being represented by their counsel W. W. Clark; and Respondents Raymond L. Nier and J. Allen Wells, although having filed answers, being neither present in person nor represented by counsel, and the parties represented by counsel being ready for trial; L. O. Tucker was duly sworn

as shorthand reporter. On motion of the Trustee in Bankruptcy, default was ordered against all parties who failed to answer or appear.

Thereupon, counsel for Respondent Barringer asked permission to amend pleading filed by said respondent in answer to trustee's petition to marshal liens filed herein on June 6, 1931, by adding a paragraph (six) as follows: "This defendant denies that said trustee now is, or ever was, in possession of the premises described in the petition filed herein by the trustee to marshal liens on June 6, 1931", and also asked that the record show objection by Respondent Margaret B. Barringer to any proceedings had before the Referee, in which the validity of her lien is by the trustee contested, and moves to strike from the trustee's petition to marshal liens filed on June 6, 1931, the eleventh and twelfth paragraphs thereof. Objection having been made by counsel for the trustee in bankruptcy upon the ground that the motion to strike was too late after answer had been filed, the motions of Respondent Barringer to amend [644] and to strike were by the Referee denied, to which rulings Respondent Barringer saved exceptions.

"Mr. NEALON: If your Honor please, I would like in this case, and I think Mr. MacKay agrees with me, and I suppose Mr. Gust would, too, that the usual rule that all the rulings be preserved to the answers and when we come to the testimony that it be taken down subject to the objection, so that on appeal

the whole record will be before the court, following the usual practice in that matter.

The REFEREE: Yes.

Mr. NEALON: That may be done, I assume?

The REFEREE: That may be done.”

Thereupon, the “Motion to Strike out Redundant and Impertinent Matter from the Answer of Margaret B. Barringer”, theretofore filed by the trustee in bankruptcy, was argued by counsel and granted by the Referee, an exception to said ruling being saved by Respondent Barringer.

Thereupon, “Motion to Strike out Redundant and Impertinent Matter from Amended Answer of Phoenix Title & Trust Company to Order to Show Cause on Trustee’s Petition to Marshal Liens and Sell”, theretofore filed by the trustee in bankruptcy, was argued by counsel and granted by the Referee, it being stipulated that counsel for Phoenix Title & Trust Company might, within ten days thereafter, if deemed necessary, file an amended pleading on matters affected by ruling on said motion, but that the hearing should proceed at this time. It was further stipulated between counsel that if matters raised in the motion for bill of particulars theretofore filed by the trustee in bankruptcy, as against Phoenix Title & Trust Company were not [645] adduced by the evidence at the hearing, that said Phoenix Title & Trust Company would supply the same.

Thereupon it was stipulated that the Respondent Barringer might also have the privilege granted

to Respondent Phoenix Title & Trust Company, to amend her pleadings as to any matters affected by the ruling of the court in granting the motion to strike from the Answer of Margaret B. Barringer.

L. J. TAYLOR

a witness called on behalf of Respondent Barringer, testified as follows:

Direct Examination

By Mr. MACKAY.

I am, and in 1928, was secretary and trust officer of Phoenix Title & Trust Company. I had a business transaction in which Mrs. Barringer and Mr. Owens were involved. I first met Mrs. Barringer some time after that, as Mr. E. J. Bennitt acted as Mrs. Barringer's agent in that business, and my negotiations were with him. I was acquainted with L. D. Owens, Jr. at that time, and with H. C. Dinmore, but I never met Mr. S. W. Mills. I have in my possession deed or instrument of conveyance whereby Mrs. Barringer conveyed real estate to Phoenix Title & Trust Company. Whereupon, witness produced the instrument which was marked Respondent Barringer's exhibit No. 1 for identification. The date of said instrument is December 17, 1928. It was stipulated by counsel that the property described in said exhibit was later subdivided under the name of Windsor Square.

Whereupon, said document was received in evidence as

(Testimony of L. J. Taylor.)

RESPONDENT BARRINGER'S EXHIBIT

No. 1 [646]

Respondent Barringer's Exhibit No. 1 is in words and figures, as follows, to-wit:

“WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That MARGARET B. BARRINGER and D. M. BARRINGER, her husband, of the County of Delaware, State of Pennsylvania, for and in consideration of Ten and no/100 Dollars, to them in hand paid by Phoenix Title and Trust Company, a corporation of Maricopa County, Arizona, Trustee, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said Phoenix Title and Trust Company, Trustee, to hold, sell and convey, mortgage or pledge the property hereby conveyed and hereinafter described, or otherwise to handle the said property in the same manner as though the Phoenix Title and Trust Company held [647] the said property in fee simple and not as Trustee; including therein full power and authority to plat into blocks, lots, tracts, parks, streets and alleys or otherwise, the property hereby conveyed and hereinafter described, and to dedicate portions thereof as parks, streets and alleys, or otherwise, to the public use; and including full power to sell and convey the property hereby conveyed and hereinafter described, or any part thereof upon such

(Testimony of L. J. Taylor.)

terms as said Trustee shall designate; and to make, execute and deliver deeds therefor, in the name of said Phoenix Title and Trust Company, Trustee; and to do all further acts and things necessary or incidental for the carrying out of the above purposes, all that property situate in Maricopa County, State of Arizona, and described as follows, to-wit:

Lots 1 to 10 inclusive, and Lots 12 to 18 inclusive, COLTER TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 6 of Maps, page 35 thereof;

EXCEPT tract 30 feet East and West by 25 feet North and South in the Southeast corner of Lot 18, (referred to as Lot 7 in Deed) COLTER TRACT, as more fully described in that certain Deed to the Salt River Valley Water Users' Association, recorded Feb. 20, 1919 in Book 132 of Deeds, page 158, records of Maricopa County, Arizona.

Together with all rights and privileges appurtenant or to become appurtenant to said property by virtue of the [648] subscription of said property for shares of the capital stock of the Salt River Valley Water Users' Association, and subject to all the terms, conditions and liabilities incident thereto.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights

(Testimony of L. J. Taylor.)

and appurtenances thereto in anywise belonging unto the said Phoenix Title and Trust Company, Trustee, its successors and assigns forever.

And they hereby bind themselves, their heirs, executors and administrators to warrant and forever defend, all and singular, the premises unto the said Phoenix Title and Trust Company, Trustee, its successors and assigns, against every person whomsoever, lawfully claiming or to claim the same or any part thereof, as against all acts of the Grantors herein and no other.

It is understood and agreed by and between the parties hereto that this conveyance of the legal title to the grantee herein as Trustee shall not operate to extinguish any mortgage or mortgages on said property that the Phoenix Title and Trust Company or the Phoenix Title and Trust Company, Trustee, now holds or may hereafter acquire; but that such mortgage shall remain in force as a valid lien or liens on said premises until released of record.

Said Grantor, however, not warranting as against the following:

Taxes levied subsequent to December 31st, 1928; and Rights of way for canals, laterals and ditches.

WITNESS our hands this 17th day of December, A. D. 1928.

ELIZABETH CRAIG.

MARGARET B. BARRINGER. (Seal)

D. M. BARRINGER. (Seal)" [649]

(Testimony of L. J. Taylor.)

Said deed was acknowledged by Margaret B. Barringer and D. M. Barringer, in Philadelphia County, Pennsylvania, on January 5, 1929, and recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 228 of Deeds at pages 518-519, at the request of the Phoenix Title and Trust Company, on January 14, 1929.

The WITNESS resuming: Phoenix Title & Trust Company as such gave no money or other thing of value in return for the conveyance. At that time I knew Thomas J. Tunney. He was a clerk in Phoenix Title & Trust Company and, so far as I know, did not owe Mrs. Barringer any money. I have in my possession a declaration of trust which was executed by Phoenix Title and Trust Company covering the premises described in Respondent Barringer's exhibit No. 1. The declaration of trust is dated January 9, 1929, and is signed by Mr. Clements as vice-president of Phoenix Title & Trust Company and attested by myself as secretary. I know the signatures of Mr. Clements and myself to be true signatures.

Thereupon, the Declaration of Trust referred to by the witness was received in evidence as

RESPONDENT BARRINGERS EXHIBIT

No. 2.

Said exhibit is in words and figures as follows, to-wit:

(Testimony of L. J. Taylor.)

“Trust No. 418

DECLARATION OF TRUST

KNOW ALL MEN BY THESE PRESENTS:

That PHOENIX TITLE AND TRUST COMPANY, a corporation organized and existing under the laws of the State of Arizona, Trustee, hereinafter sometimes called the ‘Trustee’, has heretofore received title to that certain real property situated in the County of Maricopa and State of Arizona, described as follows: Lots 1 to 10 inclusive and Lots 12 to 18 inclusive, [650] COLTER TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 6 of Maps, page 35 thereof; EXCEPT tract 30 feet E. and W. by 25 feet N. and S. in the S. E. Corner of Lot 18, (referred to as Lot 7 in Deed) COLTER TRACT, as more fully described in that certain deed to the S. R. V. W. U. A., recorded Feb. 20, 1919 in Book 132 of Deeds, page 158, records of Maricopa County, Arizona; and EXCEPT rights of way for canals, laterals and ditches. SUBJECT to the liabilities of said property on account of subscription for shares of capital stock of the Salt River Valley Water Users’ Association and all the terms and conditions incident thereto and to the 1929 State and County tax liens.

THAT, WHEREAS, no consideration for the real property hereinbefore described was paid by the Trustee hereunder, but all thereof was paid by the

(Testimony of L. J. Taylor.)

Beneficiary hereinafter named, or others for and on his behalf;

THAT, WHEREAS, a certain debt in the principal sum of Eighty Five Thousand Dollars (\$85,000.00) is owing by said Beneficiary to MARGARET B. BARRINGER hereinafter sometimes called the 'Payee', being for the balance due as the purchase price of said property, as evidenced by one certain promissory note in words and figures following:

'\$85,000.00

Phoenix, Arizona, December 20, 1928

Three years after date, for value received, I promise to pay to MARGARET B. BARRINGER or order, at 130 West Adams Street, Phoenix, Arizona, the sum of Eighty-five Thousand and no/100 Dollars, with interest thereon from December 20, 1928 to maturity of this note, at the rate of seven per cent per annum, payable quarterly. Should the interest as above [651] not be paid when due, it shall thereafter bear interest at ten per cent per annum until paid. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note, with interest from date of such default at ten per cent per annum until paid on the entire unpaid principal

(Testimony of L. J. Taylor.)

and accrued interest. Should the principal hereof not be paid in full at maturity, it shall thereafter bear interest at ten per cent per annum until paid. Principal and interest payable in lawful money of the United States of America. Should suit be brought to recover on this note, I promise to pay as attorney's fees 5% additional on the amount found due hereunder. This note is secured by Declaration of Trust No. 418 of the Phoenix Title and Trust Company.

(Signed) THOMAS J. TUNNEY.'

WHICH INDEBTEDNESS is hereby declared to be a first lien upon, and is deemed to be secured by, the entire beneficial interest under this Trust, in the manner hereinafter provided;

PARCELS OR LOTS covered hereby may be released, provided no default exists under the terms hereof at the time of demand and payment therefor, from the lien of the hereinabove described debt, upon payment to the said Trustee—for the account of said Payee—of the respective amounts of the sales prices of said parcels or lots as set forth in 'Section Four' of this Instrument, provided that the minimum amount to be received for the credit of the Payee from the sale of each lot shall be agreed upon by said Trustee, said Payee, and the Beneficiary hereunder, and indicated on Schedule of Release [652] Prices to be marked 'Exhibit B', and to be attached hereto, and then to be a part hereof the same as though attached hereto at the

(Testimony of L. J. Taylor.)

signing of this Instrument; all of said release prices, however, to aggregate the sum of One Hundred Twenty-five Thousand Dollars (\$125,000.00).

EACH such release price received by said Trustee to be applied by it on the principal of the debt secured hereunder. Interest on such amount, or portions thereof, in case of partial accumulations as provided in Section Four, however, shall not cease until the quarterly interest paying date next succeeding its application by the Trustee;

SAID TRUSTEE, at all times, shall have full right and power to make conveyance of the property covered by Sales Agreements issued by it hereunder after receipt by said Trustee of the hereinbefore mentioned release price thereof and after full performance of each and every of the Vendee's obligations under such Sales Agreements.

AND WHEREAS, it has been agreed that the premises hereinbefore described is proposed to be subdivided or improved, or both subdivided and improved, by the Beneficiary hereunder; and that the plat or plats of such subdivision shall be prepared by said Beneficiary, executed and acknowledged by said Trustee, and filed for record in the office of the County Recorder of Maricopa County; said Trustee being authorized to dedicate to public use all streets, roads, alleys, parks or easements shown on such plat or plats, and/or convey the same or a portion thereof to the County of Maricopa

(Testimony of L. J. Taylor.)

or the City of Phoenix, as the case may be; provided that any such plat shall be approved by the City Planning Commission or the City Commission of the City of Phoenix and by the Board of Supervisors [653] of Maricopa County, as by law provided, prior to such recordation;

HOWEVER, said Beneficiary shall have only such possession of the real property covered hereby as may be necessary in the subdivision or improvement of the property as aforesaid, or in the fulfillment of any of the obligations of said Beneficiary under this Trust;

AND ALL COSTS and expenses incident to the aforesaid subdivision and improvement of the trust property shall be borne solely by said Beneficiary, and no part thereof shall be borne by the said Trustee or the Payee hereunder.

FURTHERMORE, it is expressly understood that, before any parcel or lot in any aforesaid subdivision is offered for sale under the provisions of 'Section Two' of this Instrument, said Beneficiary shall furnish to said Trustee a written statement of the following: (1) The number, size and selling price of lots into which said subdivision has been or is to be subdivided; (2) The representations and inducements which are to be made to Buyers of the trust property, relative to the improvements in, on or about said property; (3) The improvements to be made in or on said trust property or in or on

(Testimony of L. J. Taylor.)

the streets in or adjoining said property, with reference to grading, surfacing, filling, levelling, storm drains, installation of sidewalks, curbs, electricity, water or other improvement; which statement shall be accompanied by an estimate, of all costs and expenses of said improvement, from a reliable contractor or engineer;

AND ALL ADVERTISING shall clearly show that the Beneficiary or his agents are the authors thereof, and the Trustee shall not be liable for any statement or representation [654] therein contained, or otherwise made by said Beneficiary or his agents, and there shall be no implication that the Beneficiary or his agents are the agents of, or speaking on behalf of the Payee or the Trustee herein. Moreover, all Sales Agreements entered into under the terms hereof shall in each case be the whole contract between the parties thereto and no representation theretofore made by any person, other than as contained in said Sales Agreement, shall be binding upon or an obligation of said Trustee or said Payee.

AND WHEREAS, said Beneficiary, by his approval of this Declaration, promises and agrees to protect and save harmless said Trustee, said Payee and the premises covered hereby, from all loss, damage, liability and expense by reason of said subdivision and all improvements whatsoever of the trust property; and, likewise, promises and agrees to furnish said Trustee, without demand therefor, such guaranty and indemnity as said Trustee shall

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deem necessary to protect said Trustee, said Payee and the premises covered hereby, from all loss, damage, liability and expense by reason of said subdivision and all of said improvements or any of them; and the said Beneficiary, by his approval of this Declaration of Trust, further agrees that the Trustee shall hold the sum of Thirty Thousand Dollars (\$30,000.00), deposited with the Trustee at or prior to said approval in the Improvement Fund provided for in 'Section Five' of this Declaration of Trust, for the purpose of paying or applying toward payment for the installation of sidewalks, curbs, domestic water well and domestic water system, electricity, grading and surfacing streets, ornamental lights, culverts and/or tile and/or pipes for irrigation water, removal of the present well of the Salt River Valley Water Users' Association and sinking new well, landscaping said property [655] and/or for planting trees and shrubbery or for such part of said improvements as may be placed on or installed in said premises; which improvements, in any event, shall not be less than those hereinafter specifically agreed to be placed on or installed in said premises; such fund so held to be paid out by the Trustee, as provided in 'Section Five' of this Declaration of Trust;

AND THE BENEFICIARY hereunder, by his approval of this Declaration, also promises and agrees as follows: (a) TO PAY, during the life of

(Testimony of L. J. Taylor.)

this Trust and before delinquency, all taxes and assessments levied or assessed against the property covered hereby or against the debt secured hereunder, or both such property and debt. (b) TO PAY, when due, all other claims, liens and encumbrances affecting the title to the property covered hereby, and all costs, charges, interest and penalties on account thereof; also all costs, fees and expenses hereunder of the Trustee and of this Trust. (c) TO DEFEND or cause to be defended any action or proceeding affecting the property covered hereby, this Trust, or the rights of the Trustee hereunder; and to pay all costs and expenses of any such action or proceeding, together with attorney's fees in a reasonable sum to be fixed by the court, whether any such action or proceeding progress to judgment or not, and whether brought by or against the Trustee or the Payee hereunder. (d) TO PROTECT, preserve and defend the property covered hereby and the title thereto, and to keep said property in good condition by proper care, inspection, repair, or otherwise, and to permit no waste or deterioration thereof. (e) TO PAY all assessments of the Salt River Valley Water Users' Association, when due, and before delinquency. Should such assessment for any reason, not [656] be paid prior to delinquency, then, at the time of sale of any lot or lots into which the property may be subdivided, all assessments of the Salt River Valley Water Users'

(Testimony of L. J. Taylor.)

Association theretofore levied, necessary to clear the property so sold, shall be fully paid. (f) TO REPAY, within thirty (30) days from date of advancement, and without demand therefor, each sum advanced or expended by the Trustee or the Payee under the terms of this Instrument, together with the interest thereon hereinafter mentioned. (g) TO CAUSE a well or wells of sufficient size and capacity to furnish an adequate supply of water to said subdivision to be dug on said premises and to install a pump or pumps of a size and capacity sufficient to pump an adequate supply of water for said subdivision, and to install mains of such size, capacity and material as are sufficient to deliver an adequate supply of water to each lot in said subdivision. (h) TO GRADE all streets and alleys in said subdivision and to surface the same with a rock surface or, at his option, with a more enduring surface; and to cause said subdivision to be served with electric power furnished by and under specifications of the Central Arizona Light and Power Company or the Salt River Valley Water Users' Association. (i) Within six (6) months from date of the consummation of the first sale made under the provisions of 'SECTION TWO' of this instrument TO COMMENCE AND THEREAFTER CONTINUOUSLY TO PROSECUTE WITH DUE DILIGENCE THE INSTALLATION of, and within twelve (12) months (or such

(Testimony of L. J. Taylor.)

extension, if any, thereof, as may be granted by said Trustee) from date of such commencement, TO COMPLETE all subdivision and improvement work hereinbefore mentioned, intended to be made of property covered hereby; and to protect and save harmless by reason thereof said Trustee and all lands herein described. [657]

IT BEING UNDERSTOOD AND AGREED that should said Beneficiary fail or refuse to make any payment or payments or to do any act or acts hereinbefore—in foregoing paragraphs ‘(a) to (i)’ both inclusive—mentioned, in the manner and at the times therein provided, then said Trustee, or the Payee hereunder with the consent of said Trustee, and without notice to said Beneficiary, may make or do the same in such manner and to such extent as said Trustee, or said Payee with the approval of said Trustee, may elect; and said Trustee, or said Payee with the consent of said Trustee, may pay, purchase, contest or compromise any claims, liens or encumbrances which, in the judgment of said Trustee, appear to affect property covered hereby or this Trust, and may advance money or moneys, from time to time, to effect the foregoing purposes or any of them;

INCLUDING the right and power on the part of said Trustee, or said Payee with the consent of said Trustee, to cause the aforesaid subdivision and/or improvements to be made of the trust property, in such manner, to such extent, and at such times—